

DOCKET NO. 175-SE-0316

STUDENT, b/n/f/	§	BEFORE A SPECIAL EDUCATION
PARENT, Petitioner and	§	
Counter-Respondent	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
WARREN INDEPENDENT	§	
SCHOOL DISTRICT,	§	THE STATE OF TEXAS
Respondent and Counter-Petitioner	§	

DECISION OF THE HEARING OFFICER

Petitioner and Counter-Respondent STUDENT (“the Student”), by next friend, PARENT (“the Parent”), requested a due process hearing against Respondent and Counter-Petitioner Warren Independent School District (“WISD” or “the District”) pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.* and its implementing state and federal regulations.¹

This dispute concerns *** school student who qualifies for special education and related services as a student with *** (“****”) and Attention Deficit Hyperactivity Disorder, Combined (“ADHD”) whose behavior has impacted access to the general education curriculum. It is undisputed that the Student enrolled in WISD in *** and ultimately ceased attending school in *** by choice of the Parent.

The Parent believes not only that WISD failed to provide a free appropriate public education (“FAPE”) for the Student, but also that WISD’s special education setting and services caused *** to the Student that ultimately led to the Parent’s decision to *** rather than return to school. The Parent disagrees with the *** designation of the Student and believes that WISD should have immediately placed the Student directly into a general education setting at *** from *** forward rather than in a predominately self-contained placement staffed with a special education teacher and aide ***.

By contrast, WISD believes that the Student’s misbehavior mandated the *** setting to allow the Student to access the general education setting in varying amounts each day as tolerated by the Student. Under this individualized program, WISD believes the Student received an appropriate program that delivered a FAPE to the Student – even with the Student’s ***.

¹ For simplification of reference, Petitioner/Counter-Respondent will be referred to as “Petitioner” and Respondent/Counter-Petitioner will be referred to as “Respondent.”

PARTY REPRESENTATIVES

Michael P. O'Dell, Attorney at Law in Houston, Texas, represented Petitioner/Counter-Respondent. Sara Leon and Andrew Tatgenhorst, Powell & Leon, L.L.P. in Austin, Texas, represented Respondent/Counter-Petitioner.

PETITIONER'S ISSUES AND REQUESTED RELIEF

Petitioner alleges that WISD denied the Student a FAPE under Respondent's program since ***, based on the following actions or inactions of Respondent:

1. Whether Respondent developed a placement and an appropriate Individualized Educational Program ("IEP") uniquely designed for the Student that provided an educational benefit and enabled the Student to make progress;
2. Whether Respondent provided the Student with a placement in the least restrictive environment ("LRE") appropriate for the Student's needs, including placement at ***;
3. Whether Respondent complied with pertinent regulations regarding the Student's ***, including: a) *** IEP implementation and placement; b) obtaining ***; c) conducting any necessary testing; and, d) holding a *** Admission, Review, and Dismissal Committee ("ARDC") meeting to revise the Student's IEP and placement;
4. Whether Respondent appropriately revised the Student's IEP based on existing evaluation data and previous educational information;
5. Whether Respondent kept proper ARDC meeting documentation for the Student, including records of school personnel attending and signing ARDC meeting documents;
6. Whether Respondent's teaching staff responded appropriately to the Student: a) with positive rather than negative verbal comments; and, b) with appropriate behavior techniques for behavior de-escalation;
7. Whether Respondent's placement of the Student into a self-contained school space with a staffing ratio of *** (***) negatively impacted the Student's behavior and resulted in *** that disrupted the Student's educational progress including: a) ***; b) *** ("****"); c) ***; and, d) ongoing need for ***;
8. Whether the Parent was an equal participant and stakeholder in Respondent's ARDC meetings for the Student, including meetings held with the presence of Respondent's attorney while the Parent participated without assistance of an advocate or attorney; and,
9. Whether the Student made educational progress during the 2015-2016 school year, including progress in the area of behavior?

Petitioner seeks the following relief:

1. An order that the Student was denied a FAPE during the 2015-2016 school year;
2. An order that the Student be privately placed at school district expense in the *** in the "****" program for the remainder of the 2015-2016 school year and for the 2016-2017 school year;
3. An award of one year of compensatory educational services, to be provided at the *** for the 2017-2018 school year;
4. An award of private extended school year ("ESY") services for summer of 2016, to be provided at the *** during the entire summer session offered by the private school;

5. Compensatory educational services of eight weeks of summer school at the *** for summer of 2017;
6. Provision of two hours of counseling per week for the entire period the Student attends the *** at school district expense;
7. Provision of one hour per week of *** for the next two years at school district expense;
8. Provision of transportation at school district expense or reimbursement to the Parent for transportation: a) to and from the ***; and, b) to the Student's ***;
9. Reimbursement of costs of private counseling obtained by the Parent to address *** and *** in the school district; and,
10. An award of compensatory educational services by Respondent to compensate the Student for a failure to provide *** from ***, through the date of the issuance of the Decision of the Hearing Officer in this dispute.²

RESPONDENT'S CONTESTED COUNTERCLAIM ISSUE AND REQUESTED RELIEF

In its counterclaim, Respondent raises a single issue as follows:

Whether Petitioner's failure to participate collaboratively as a meaningful participant in the IEP development process hindered Respondent's ability to provide educational opportunity to the Student?

Because Respondent asserts continued readiness since early *** to convene an ARDC meeting for review of WISD'S completed new assessment data and for development of an educational program within any educational placement appropriate for the Student, Respondent seeks the following relief:

1. An order that the Student's ARDC meet to review and develop a program to support the Student in the WISD ***, ***, based upon the recommendations from all evaluations;
2. A finding that Petitioner's action unnecessarily delayed the resolution of this matter; and,
3. Denial of all relief sought by Petitioner.³

² Petitioner's amended complaint included relief of attorney's fees and representation expenses outside the jurisdiction of the hearing officer.

³ Respondent's requested relief included relief outside the jurisdiction of the hearing officer of attorney's fees.

PROCEDURAL HISTORY

This is the second of two due process hearing complaints filed on the Student in February 2016.⁴ The Parent filed the instant dispute *pro se* on February 29, 2016, received by the Texas Education Agency (“TEA”) on March 1, 2016. The initial scheduling order set the hearing for a one-day setting on April 7, 2016, with the Decision Due Date on May 16, 2016.

The parties waived the Resolution Meeting and attempted mediation on March 11, 2016, but were unable to reach agreement. Parent retained the services of Mr. O’Dell on March 14, 2016. On March 20, 2016, Mr. O’Dell filed an amended due process complaint that restarted the timeline in this docket and reset the due process hearing to a two-day setting on May 3-4, 2016, with a revised Decision Due Date of June 3, 2016.⁵ On ***, the parties participated in a telephonic conference that resulted in a discovery deadline for all discovery responses set for April 6, 2016, and the issuance of subpoenas for records through six witnesses as requested by Respondent.

On March 30, 2016, Respondent filed its counterclaim. On March 31, 2016, the parties participated in a Resolution Meeting that was unsuccessful. On April 7, 2016, a telephonic pre-hearing conference took place regarding documentation from the *** parent regarding ***. The *** parent did not further pursue ***. Over the objection of Petitioner and at the request of Respondent, subpoenas for six additional witnesses issued regarding various health providers and *** with information relative to the Student.

The due process hearing took place as scheduled on May 3-4, 2016. Prior to the conclusion of the due process hearing, the parties jointly sought leave for an extension of the Decision Due Date to June 27, 2016, to allow the parties time to review the voluminous documentary evidence in this record and to accommodate submission of the parties’ written closing statements on the then-current Decision Due Date of June 3, 2016, granted for good cause shown.

On May 26, 2016, Petitioner sought an unopposed continuance seeking an eight-day extension of the Decision Due Date to July 5, 2016, to accommodate additional time for submission of the written closing statements as Petitioner did not receive the hearing transcripts at the same time as Respondent and the Hearing Officer, granted for good cause shown. The parties timely submitted their written closing statements on June 10, 2016. On June 15, 2016, Respondent filed an objection to certain statements in Petitioner’s written closing statement alleging no support in the record. The record closed on June 15, 2016, and the Decision of the Hearing Officer timely issued on July 5, 2016.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

⁴ The first due process complaint (Docket No. 154-SE-0216), received on February 10, 2016, was withdrawn by the Parent on February 24, 2016.

⁵ 34 C.F.R. § 300.508(d)(4).

FINDINGS OF FACT⁶

Background

1. The Student is *** year-old student who lives with the Parent *** within the WISD boundaries. The Student began *** grade in *** at WISD. At this time, the Student had *** eligibility. [Pleading File; Tr. at 47-48].

2. The Student ***. Previously, the Student attended WISD during *** and during *** grade in ***. [J.Ex. 1; R.Exs. 59 at 4667 and 69].

3. WISD is a small school district ***, *** and the WISD Administrative Building in Warren, Texas. ***. *** is ***. [Tr. at 575-576 and 689-691].

4. The District's *** is located at the *** campus, ***. The *** campus has the support of *** administrators, *** support staff, and ***. Currently, *** students with *** are served in the *** classroom. [Tr. at 574-575, 689-690, 694].

5. WISD belongs to the Tyler County Special Education Cooperative, (“TCC”) a special education cooperative that serves five school districts located in Woodville, Texas. [J.Ex. 21 at 1206; Tr. at 316].

6. The Parent believes that the Student ***. *** (“****”) and *** have been involved with the Student since ***. In ***, the Parent ***. [R.Ex. 69 at 5326-5328].

7. In ***, based on information from the Parent, ***. In ***. In ***. During this period, the Student, the Parent, ***. [R.Exs. 43 at 985-990, 58, 59 at 4682-4691, and 69 at 5327-5330, 5351-5353].

8. In ***, the Parent reported ***. The Student, according to the Parent, ***. By the Parent's report, the Student was “****” and the Student was in counseling at that time. [R.Ex. 58 at 4927].

9. ***. [Tr. at 133-134].

*** _ ***

10. The Student attended *** at *** in WISD during the *** school year and exhibited behavior problems at school such as ***. The Parent did not recall any *** behavior incidents other than *** Principal, Mr. ***, that the Student was acting in an immature manner and that

⁶ References to the transcript of this proceeding are noted by page number (example: “Tr. at 6”). References to Joint Exhibits (“J.Ex.”), Petitioner's Exhibits (“P.Ex.”), and Respondent's Exhibits (“R.Ex.”) list the exhibit number and the page number (example: “P.Ex. 4 at 352; R.Ex. 3 at 1067”). Where Petitioner's and Respondent's exhibit pages are referenced by Bates stamps, unnecessary lead zeros in any pagination of exhibits are omitted (example: “003536” would appear as “3536”).

the Student preferred to *** rather than participate in classroom activities. [R.Exs. 69 at 5339 and 70 at 4879-4881].

*** _ ***

11. ***. The Student attended *** at *** for the *** school year *** behavior plan. The *** teacher reported “definitely having serious issues, and aggression with [the Student].” The Student ***, and showed disrespect to the teacher. By contrast, the Parent recalled that the Student had only one behavior incident during the *** year. [R.Exs. 69 at 5355-5356 and 70 at 4873-4878].

*** _ ***

12. The Student began *** in the *** school year at ***. In ***. Rather than placing the Student in the “****” *** school, the Parent used an *** *** (****) into the “****” *** in *** (“****”). [R.Ex. 69 at 5356-5357].

13. By ***, the Student’s misbehaviors jeopardized continuation of the Student’s ***. On ***, the campus began a “**** behavior intervention program” to work on three goals: a) ***; b) ***; and, c) ***. By ***, the Student began a steady decline in performance on daily behavior goals. By ***, the Student received *** office referrals for ***, ***, ***, and ***. The Student’s misbehaviors included ***, ***, ***, ***, ***, ***, ***, ***, and ***. [J.Ex. 1 at 1545, 1547, 1553, 1555-1556; R.Ex.70 at 4884-4916].

14. On ***, *** referred the Student for a special education evaluation and the Parent gave consent on ***. As of ***, the Student’s behavior resulted in suspension from school for ***, ***, and *** ***. The Student received *** while *** completed an evaluation for special education services. During this period, the Student did not receive *** because the Student’s and Parent’s ***. [J.Ex. 1 at 1545; R.Exs. 69 at 5361 and 70 at 4916].

15. The Parent denied that the Student had disciplinary problems and showed aggression during *** at ***. Instead, the Parent believes that the school principal wanted to “****” against the Student as an *** *** student. The Parent also believes that the Student was bullied by peers. [R.Ex. 69 at 5358-5359, 5363].

Special Education Eligibility – ***

16. On ***, *** completed the Student’s initial special education evaluation and determined that the Student qualified for special education with ***. The *** psychologist concluded, “[The Student’s] behavior is impacting [the Student’s] ability to access the general education curriculum. At this point in time [***], [the Student] is not able to successfully *** without a significant behavior episode.” [J.Exs. 1 at 1556-1558 and 21 at 1246].

17. The Student’s IEP Team met, with the Parent in attendance, and offered placement for the Student at ***, *** in ***. At this meeting, the Parent indicated agreement with the placement but informed the IEP Team that ***. [J.Ex. 1 at 1556, 1558, 1562].

18. The Parent does not believe that the Student should be labeled as “****” but instead should be considered “****” as a student who does not want to **** and is not an aggressive student. [R.Ex. 69 at 5332-5333].

19. In ***, ***, and the Student re-enrolled in WISD. By this time, the Student had ***. The Student **** in WISD in a self-contained classroom on the *** ***. [J.Ex. 1 at 1562 and J.Ex. 3; P.Exs. 3, 4, and 46 at 199; R.Exs. 69 at 5361 and 70 at 4916].

***** Grade – *****

20. During the summer of *** and ***. [R.Exs. 23 at 5376-5377 and 69 at 5375].

21. From *** through ***, the Student received private therapy from a private therapist, ***, to address ***. Ms. *** uses *** (“****”) techniques, a therapeutic method recognized by the American Psychiatric Association. Using ***, a therapist asks the patient to *** and the therapist guides the patient using ***. [Tr. at 77-78].

22. The Parent believes that Ms. ****’s therapy sessions were very beneficial for the Student. During Ms. ****’s therapy, the Student expressed not liking school, wanting to remain at home with the Parent, and struggling with anger and “raging behaviors” in school and home settings. [R.Ex. 59 at 4695; R.Ex. 60 at 4752, 4757].

23. ***, the Student *** of school. The Parent explained that *** resulted because the Parent and *** were searching for a private placement that would accept the Student with the current behavioral challenges. On ***, the IEP Team, including the Parent, agreed to placement at *** (“****”), a private school in ***. The Student’s IEP specified a *** schedule at *** for two purposes: a) to help the Student get used to the school environment; and, b) to counter some of the Student’s behavioral issues. The IEP included *** aide support as well as an additional *** minutes of *** each week as support for the Student’s ***. The Parent sporadically accessed some, but not all, of the offered ***. [J.Ex. 6 at 53-57 and J.Exs. 7, 9; R.Exs. 27 at 1515 and 69 at 5375-5378; Tr. at 345].

24. *** primarily serves students with intellectual disabilities. By contrast, the Student has average intelligence. The *** placement did not offer the Student an intellectual challenge or an opportunity to make academic progress. [J.Exs. 1 at 1550 and 21 at 1246; R.Ex. 69 at 5378-5379; Tr. at 43-45].

25. On ***, the Student’s IEP convened at *** with the Parent in attendance. The Student interacted appropriately with other students most of the time. However, the Student became confrontational with other students without warning and displayed a heightened degree of anger. At times, the Student was withdrawn during the school day. Without warnings or precursors, the Student had mood shifts. At ***, the Student’s day consisted of *** hours of academic instruction and *** hours of behavior support with a *** aide. [P.Ex. 8; R.Ex. 27].

26. As reflected on documents dated ***, *** reviewed the Student’s expected need for ESY. The IEP Team members, including the Parent, agreed that *** days of ESY services for

*** hours each day were necessary for the Student to maintain critical skills, in part because the Student was in a “critical learning stage for behavior modification.” Participants agreed that the Student would benefit from ESY services not only academically but also behaviorally by continued exposure to peers. [R.Ex. 39].

27. On ***, the Student’s IEP Team approved an “IEP Addendum” stating that the Student no longer required intensive *** and *** without including supporting detail. Only the Parent, the Student’s special education teacher, and the *** principal attended the IEP meeting. [J.Ex. 7; P.Ex. 9].

28. The Student did not receive any ESY services offered by *** and missed *** days of instruction and behavior support in the summer of ***. [R.Ex. 69 at 5380; Tr. at 345].

***** Grade – *****

29. The Student re-enrolled in WISD on ***. At the time of re-enrollment, the Parent brought the Student’s IEP but did not bring the *** addendum. The TCC Special Education Director (“TCC Director”), ***, spoke to personnel from *** and *** and learned that the Student started off with a one-to-one aide, but the aide was later withdrawn because of a low teacher to student ratio of one teacher to two students. [R.Exs. 38 at 4982 and 69 at 5381-5382; Tr. at 340-344].

30. Although the Parent indicated that therapists and officials at *** indicated that the Student could return to a general education setting, the Student was never placed in a general education classroom before the Student returned to WISD in ***. [J.Ex. 21 at 1246].

31. WISD *** school year. *** classroom at the ***. *** staff the classroom with *** as the special education teacher and with *** as an aide. [Tr. at 687-692].

32. WISD convened a *** ARDC meeting for the Student on ***, with the Parent in attendance. Participants crafted a program for the Student similar to the *** IEP and included time with non-disabled peers in the general education setting. The Parent agreed with this initial program. The paperwork from this meeting contains a typographical error that the meeting occurred on *** rather than ***. [J.Ex. 8; Tr. at 326].

33. The TCC Director realized that not all required members of the ARDC were present for the meeting on ***, and promptly scheduled a second ARDC meeting for ***, to include all required ARDC members. The Parent attended the second meeting but disagreed with the proposal for a self-contained special education placement and with general education time of *** minutes for *** (“****”) and *** minutes for lunch. The Parent expressed belief that the Student no longer had behavior problems or a disability but now needed to be in a regular education class with supports. The Parent refused the proposed placement, signed the ARDC meeting documentation as disagreed, and signed a revocation of consent for special education services at the meeting. [J.Ex. 9 at 1652; Tr. at 359, 361].

34. On ***, the Parent rescinded the special education revocation and asked for special education services. The ARDC made plans to reconvene on ***. [J.Ex. 10; Tr. at 362].

35. Ms. *** is a certified special education teacher for ***. Currently, the special education teacher is ***. Ms. *** training and experience working as *** prior to employment at WISD in ***. Ms. *** ***. Ms. *** currently serves as the *** classroom teacher at ***. [Tr. at 481-482].

36. Ms. *** prepared the Student's classroom to reflect the Student's interests before the Student began the *** grade year. The classroom included *** and had ***. The Student was *** classroom at this time. Ms. *** used various classroom strategies to encourage the Student to complete work, such as breaking up assignments to maintain focus. [Tr. at 485-486].

37. The Student also had assistance from a *** aide, Mr. ***. Mr. *** is a ***. Previously, Mr. *** served as *** (“****”) in ***. After *** years of success, Mr. *** and moved to the area. In ***, Mr. *** began work with WISD as ***.” [Tr. at 224, 258-264, 315].

38. The District's superintendent put Mr. *** into the *** classroom because of the aide's ability to interact well and great communication skills. [Tr. at 691-692].

39. On ***, the Parent made the first request for *** for the Student by providing WISD with a physician's prescription note asking for *** of *** for the Student “****.” [P.Ex. 30 at 1697].

40. On ***, WISD reconvened the ARDC meeting with the Parent in attendance. At this point, the Parent no longer wanted *** for the Student. Participants developed the Student's program and the meeting ended in consensus for placement in a self-contained *** classroom at *** with inclusion time in the general education setting throughout the day for *** (“****”), ***, Lunch, and Recess periods. The District provided transportation for the Student. Because of the limited records from the Student's previous schools, the ARDC wanted to gather additional assessment information on the Student. The Parent gave consent for a Functional Behavior Analysis (“FBA”) but withheld consent for a Full and Individual Evaluation (“FIE”) and counseling evaluation of the Student. The Parent subsequently withdrew the consent for the FBA. [J.Exs. 9 at 1653 and 10 at 1694-1696; Tr. at 149, 356-357, 362].

41. The ARDC developed a Behavior Intervention Plan (“BIP”) based on review of previous information on the Student from *** school records and information from the Parent while the ARDC planned to gather new FBA data. At this time, the BIP targeted two behavioral areas: a) aggressive behaviors (***), to be replaced with *** (***) out of 5 days a week); and, b) ***, to be replaced with *** (***) out of 5 days a week). Both goals included teaching replacement behaviors, social skills training, teaching problem-solving strategies, and an individual point plan for monitoring behavior using a daily point sheet. The Student had the opportunity to participate in the general education setting throughout the day for ***, **, lunch and *** general education classroom, allowing educators to gather data in the general education setting. The BIP included the use of ***, ***, and rewards for successful behavior. If the Student exhibited a targeted

behavior in the general education setting, the Student would return to the self-contained setting. [J.Ex. 10 at 1687-1690, 1693-1694; Tr. at 276-277, 505-506].

42. The ARDC continued the Student's IEP (developed by ***) through ***. [J.Exs. 13, 14 at 5202, and 18; P.Ex. 50].

43. The Student enjoyed a positive relationship with the aide as the *** school year began. [Tr. at 224, 514-515].

44. The Student was *** during the *** school year on ***. The Student ***. The Student began *** as the teacher intervened with *** efforts including providing choices, calming techniques, reducing demands, and ***. Because the Student continued ***, and ***, the teacher called for assistance. The special education teacher, Ms. ***, began *** and *** principal, Mr. ***, concluded the ***. At the end of ***, the Student was *** WISD staff and appeared ***, but did not attempt ***. The Student ***. [J.Ex. 18 at 1275].

45. The Student did not attend school on ***. WISD documentation from that date chronicles the Parent's report about the Student's ***. [R.Ex. 43 at 4558].

46. On ***, the Student *** to the special education teacher. [R.29 at 451-452].

47. The teacher *** to the Parent, the school principal, and the special education counselor. [Tr. at 562].

48. On the ***, there is a safety policy in effect requiring teaching staff to lock the doors when the teaching staff and students are in the classroom. [Tr. at 496-497].

49. An *** found that the classroom used by the Student had a "****." ***. On ***, an acknowledgement from *** confirmed that all issues had been corrected. [P.Ex. 32; R.Ex. 32; Tr. at 243, 493-494].

50. WISD had safety concerns for the Student in the *** classroom. The classroom was located ***. WISD staff *** Student's *** classroom ***. The Student was aware that *** and did not seem upset at the time that the classroom ***. The Student's classroom was *** classroom of approximately ***. [Tr. at 243, 264, 284-286, 495-496, 689-690].

***** – ARDC Meeting**

51. The ARDC convened two meetings for the Student in ***. At the first meeting on ***, the ARDC modified the Student's BIP. The Parent attended with a parent support person from the "****" program and also had assistance by telephone of an advocate living in ***. The Parent, parent support person, and the advocate actively participated in this meeting. [J.Exs. 13 and 14; P.Ex. 12; R.Ex. 28; Tr. at 418-420]

52. At the first *** ARDC meeting, the ARDC revised the Student’s BIP. Three targeted behaviors – aggression (***),***, and *** – would be replaced with three replacement behaviors of ***. [J.Ex. 18 at 1374-1406; P.Ex. 12 at 1077-1079; R.Ex. 28 at 1077-1079].

53. Positive interventions, strategies, and supports in the revised *** BIP included ***. Additional strategies identified as helpful with the Student included ***. [R.Ex. 28 at 1077-1079].

54. The *** BIP addressed the targeted behavioral areas with a verbal warning, loss of behavior points, and restitution as follows:

<p>AGGRESSION</p> <p>***</p> <p>***</p> <p>***</p> <p>***</p> <p>***</p> <p>***</p>	<p><u>Aggression Consequences</u></p> <ul style="list-style-type: none"> ● *** ● *** ● *** ● *** ● *** ● *** ● *** <p>Mastery: ***% of time per *** days (consecutive days)*</p> <p>*Mastery criteria measured by % exhibited in daily behavior points</p>
<p>***</p> <p>***</p>	<p><u>*** Consequences</u></p> <ul style="list-style-type: none"> ● *** ● *** <p>Mastery: ***% of time per *** days (consecutive days)</p>
<p>***</p> <p>***</p>	<p><u>*** Consequences</u></p> <ul style="list-style-type: none"> ● *** ● *** ● *** ● *** <p>Mastery: ***% of time per *** days (consecutive days)</p>

[J.Ex. 18 at 1374-1406; R.Ex. 28 at 1062, 1077-1079, 1107; Tr. at 418-420].

55. During the first *** ARDC meeting, the ARDC granted additional parental requests of *** with the Student and allowing the Student to *** upon request. The Parent signed in agreement with the decisions of this meeting and on the same date, gave written consent for a FIE and a psychological evaluation by Dr. ***, a TCC psychologist. [J.Ex. 18 at 1406-1409; P.Ex. 12; R.Ex. 28; Tr. at 422-424].

56. At the first *** ARDC meeting, participants reviewed the Student's Present Levels of Academic and Functional Performance ("PLAAFP") in academic areas. At this time, the Student *** at or above grade level. The Student's skills in the areas of *** ("****") and *** fell below grade level. The ARDC developed an IEP for ***, ***, ***, ***, and ***. The IEP was based on the general education curriculum and was designed to supplement the grade-level Texas Essential Knowledge and Skills ("TEKS") level. The Student's schedule specified opportunities to participate in the general education setting during Lunch, ***, ***/****, ***, and a *** of *** minutes per week. The placement determination specified that the Student would be able to participate in all age-appropriate non-academic and extracurricular activities and that the Student may be excluded from participation through implementation of the BIP. Participants accepted the Student's IEP at this meeting. [P.Ex. 12; R.Ex. 28; Tr. at 541-550].

57. By the time of the first *** ARDC meeting, WISD had sufficient direct experience working with the Student that WISD believed that the Student's setting *** the program. The ARDC agreed to *** as requested by the Parent. All ARDC meeting participants signed in agreement at the end of the meeting. [P.Ex. 12; R.Ex. 28; Tr. at 431-432].

58. On ***, the Parent made a second request for *** but provided no documentation to support the request. The Parent expressed disagreement with the ARDC draft of the Student's IEPs reviewed on ***. The Parent also expressed disagreement with the written minutes from the meeting. [R.Ex. 43 at 2496].

59. The Parent delayed the Student's *** on ***, after making a telephone call to TCC Special Education Director, ***. The Parent told Ms. *** that the Student *** and the Parent did not want to set the Student up for failure at ***. [R.Ex. 43 at 2467].

60. On ***, the Parent revoked consent for the WISD psychological evaluation by Dr. **. On ***, the Parent specified that all testing was to stop and asked that WISD staff working with the Student be limited to the Student's special education teacher and aide, the campus principal, and general education teacher. [J.Ex. 18 at 1201-1205; R.Ex. 43 at 1493].

61. WISD sent notice of a second ARDC – scheduled for *** – to the Parent on ***, and on ***. The notice of this meeting indicated that the District would have legal counsel at the meeting. [J.Ex. 18 at 1446-1447].

62. A *** of the Student occurred on ***. The Student ***. Prior to ***, the Student's special education teacher implemented a variety of *** efforts including *** program strategies. Campus principal, Mr. ***, ***. The Student wanted to return to the classroom and was ***. The Parent was *** that afternoon and the student ***. [J.Exs. 18 at 1276 and 25 at 293; R.Ex. 74].

63. On ***, the Parent stated desire to have the Student spend the entire school day within the general education setting. [R.Ex. 44 at 4255-4256].

***** – ARDC Meeting**

64. The second ARDC meeting on ***, convened with the Parent in attendance. The District believed that the Parent would be bringing an advocate to this meeting and arranged for WISD's attorney, Mr. Tatgenhorst, to travel to the District from Austin, Texas. The Parent did not bring an advocate or support person to this meeting. WISD made an audio recording of the meeting and without the knowledge of meeting participants, the parent ***. [J.Ex. 18; P.Ex. 50; R.Ex. 34; Tr. at 700-701].

65. ARDC participants reviewed the counseling evaluation performed by ***, TCC Special Education Counselor. The counselor observed and interviewed the Student with the Parent in attendance on ***. The counselor used the norm-referenced assessment of the BASC-2 Teacher Rating Scales form for the Parent and special education teacher. Both the Parent and the special education teacher's scores showed the same score pattern. Assessment results indicated a high level of maladjustment, hyperactivity, conduct problems, and depression. The Student qualified for special education counseling and the counselor recommended direct counseling services for *** minutes each week. The Parent disagreed with the counseling evaluation and stated belief that the Student requires *** counseling. At the end of the meeting, the Parent agreed to allow counseling at school. The Parent gave consent for counseling therapy to begin at the second *** ARDC meeting for direct services of *** minutes, for *** of *** weeks. [J.Exs. 13 at 5257, 14 at 1586, and 18 at 1195, 1285-1290].

66. ARDC participants discussed in detail the need for additional evaluations at the second *** ARDC meeting. The Parent does not see misbehavior from the Student in the home environment and expressed concerns about confidentiality. WISD and TCC participants responded to the Parent's multiple concerns that the additional evaluation data is needed to determine what triggers cause the Student to behave differently at school. At the conclusion of the meeting, the Parent signed consent for an FBA and a new FIE of the Student to include a psychological assessment, counseling evaluation, assistive technology ("AT") evaluation, and in-home and parent training assessment. [J.Ex. 18 at 1189-1196 at; R.Ex. 34; P.Ex. 50].

67. The Parent was upset at the second *** ARDC meeting about *** at the ***. District participants explained that ***. At the time of the second ARDC meeting, WISD staff reported that the Student *** as well as *** general education setting, including *** [J.Ex. 18; R.Ex. 34; P.Ex. 50].

68. At the time of the second *** ARDC meeting, participants reviewed the Student's progress on updated goals and objectives. At *** on ***, the Student scored at the *** grade, *** month level for *** and at the *** grade, *** month level for ***. On "****" *** and ***, the Student scored at the "****" level in both subjects, comparable to other students. The Student scored at the "****" level for ***, indicating the need for growth. The special education teacher, Ms. ***, presented work samples by the Student for each objective to the ARDC. Ms. *** believed that the Student was making progress in all academic areas with "tremendous gains" in *** and "making gains" in ***. The ARDC reviewed draft IEP goals for *** and ***, developed with the use of "****" testing. Participants agreed to accept the *** and *** goals and objectives. [J.Exs. 13 at 5202-5214, 14 at 1586, 17, and 18 at 1139-1147, 1194].

69. Ms. *** used multiple recommended strategies from the Student’s BIP throughout the time the teacher worked with the Student. For example, the teacher allowed the Student to ***. [R.Ex. 29 at 239; Tr. at 500-501].

70. Both the special education teacher and the aide made efforts to increase the Student’s interactions with non-disabled peers. [Tr. at 223, 226-238, 266-267, 270-280, 490-491. 506. 509-514, 562].

71. Participants at the second *** ARDC meeting discussed what might be causing the Student’s behavior. The *** aide, Mr. ***, observed that the Student becomes agitated when ***. The ARDC reviewed the Student’s BIP progress: Aggression – ***; *** – ***; *** – ***. The Student maintained behavior so far over *** of data collection on the BIP. The data also showed an increase in maladaptive behavior before *** and after *** The ARDC discussed the Student’s aversion to *** *** and ***. The Student appeared to participate well in *** and enjoyed interacting with peers, and participating in activities about half of the class period. [J.Exs. 13 at 5216-5222, 14 at 1586, and 18 at 1195].

72. On ***, ARDC members discussed when the Student’s serious behaviors took place – between ***. The Parent noted that this is the Student’s “***” time. As of this date, the Student earned a ***. Participants discussed the *** and revised the BIP to include:

Monitor Behavior (***):

- ***
- ***
- ***

Instruction by Special Education Teacher (academics based on IEP and social skills)

- Student will have option not to participate in general education setting ***
- Staff will encourage Student participation in general education setting

*** (***):

- ***
- ***
- Option for Student to participate in general education setting ***
- WISD staff will encourage the Student to participate in general education;

*** (***):

- ***
- ***
- ***

The Student also had opportunities to *** throughout the day and *** at the end of the week. [J.Exs. 13 at 5242-5249, 14 at 1585, and 18 at 1154, 1194].

73. At the second *** ARDC meeting, the ARDC discussed behavior therapy by the behavior specialist, Ms. **. At parent request, Ms. ** agreed to begin the therapy with a meeting with the Student and Parent. [J.Exs. 13 at 5251, 14 at 1586, and 18 at 1195].

74. The ARDC meeting ended in consensus and the Parent signed in agreement at the end of the meeting on **. [J.Exs. 13 at 5262-5263, 14 at 1587, and 18 at 1195].

75. The District's legal counsel did not run the ARDC meeting held on **. All participants, including the Parent, had the opportunity to voice concerns and discuss the Student's program. [J.Exs. 13, 14, and 18; P.Ex. 50; R.Ex. 34].

76. Around **, the Parent ** while the Parent **. **, the Student made various allegations that ** the Student. The Parent sent a copy ** to the ** principal and the superintendent on **. [P.Exs. 42 and 49; R.Ex. 62].

77. The ** aide, Mr. **, met with the superintendent, the special education teacher, the Parent, and the Student the day following receipt of ** in the superintendent's office. During the meeting, the Student denied the truth of the allegations, turned to the Parent, **, and said, “**.” [Tr. at 308-313].

78. Petitioner presented no evidence to refute the statements made by the Student during the meeting ** with the Parent, **, special education teacher, and superintendent.

79. A **. The Student ** WISD staff member, **, after repeatedly being asked to stop. The Student **. ** techniques used included **. Ms. ** **. [J.Ex. 18 at 1278].

80. During the ** semester of **, the Student made progress towards mastery of IEP objectives and exhibited increased ability to interact socially with non-disabled peers at school. [J.Ex. 18; P.Ex. 50; R.Ex. 34; Tr. at 270-274, 366-367].

*** – Attendance

81. The Student had multiple absences during the ** school year. The Student attended school a total of ** days, some of which were partial school days. By the choice of the Parent, the Student **. [J.Ex. 21 at 1265; P.Exs. 16, 46 at 196, and 47 at 22-23; R.Ex. 29; Tr. at 151, 290, 517-518].

82. The Student received ** during the ** school year totaling **. On **, the Student received **. On **, the Student received **. [P.Ex. 47 at 22-23; Tr. at 267-269].

83. The special education teacher arranged ** for the Student in the ** ** grade classroom taught by Ms. **. The Parent attended **. **. [R.Ex. 63; Tr. at 532-534].

84. A ***. The Student ***. A variety of efforts to *** by WISD staff included ***. The ***. The ***. The *** principal, Mr. ***, and the Student’s special education teacher, Ms. ***, ***. After ***, the Student continued to ***. 18 at 1279].

85. A ***, after the Student ***. The use of multiple *** techniques (***) were not successful prior to ***. ***. After ***, the Student continued to ***. The Student began to help ***. [R.Ex. 18 at 1280].

86. When the Student’s maladaptive behaviors included *** and ***, the Student’s special education teacher stopped the behaviors as rapidly as possible to keep the Student safe. [Tr. at 522-524].

87. The Parent sent written demands to the campus principal by email on ***, The Parent expressed belief that the Student *** by the special education teacher and aide and now was overwhelmed with fear ***. The Parent also stated that neither the special education teacher nor the aide will be working with the Student any longer. Additionally, the Parent wanted all evaluations “on my desk as soon as possible and I want an ARD meeting ASAP.” On ***, the TCC Special Education Director spoke to the Parent by telephone and followed up the conversation by email. The FIE evaluation of the Student that would address all pending evaluations was not due until ***, so the director asked whether a tentative ARDC meeting date of ***, would be workable. [R.Ex. 48 at 2397-2398, 3356-3357].

88. The campus principal and Parent met on ***. The Parent sent an email after the meeting to the principal requesting that the Student ***. The Parent also requested that ***. [R.Ex. 48 at 3821].

89. On ***, the Parent observed ***.” The Parent demanded that *** by email directed to the TCC Special Education Director. The special education teacher responded on ***, ***. The special education teacher *** upon arrival at the campus. On ***, ***, the Parent and special education teacher communicated via email about *** and information between home and school. [P.Ex. 42 at 633; R.Ex. 48 at 3161, 4101, 0516; Tr. at 253-254, 291-292, 537-538].

90. The Student did not receive instruction in the special education classroom ***. The Student was not present in school on ***. On ***, the special education teacher and the Student were not in the classroom but in another classroom ***. [Tr. at 537-538].

91. The Student stopped attending school on ***. At this time, the Student had the following grade averages for academic courses during the ***: *** – ***, *** – ***, *** – ***, ***/*** – ***, and *** – ***. [P.Ex. 46 at 196; R.Ex. 29 at 446-447; Tr. at 546].

92. At the time of the Student’s last instructional day, the Student was academically behind on grade-level TEKS but was making progress on personal IEP goals and objectives. [Tr. at 489-490].

93. The Student's behavior and attendance have hindered the Student's ability to access instructional opportunities. As a result, the Student lacks prerequisite skills needed to be ready for grade-level TEKS and to be in the general education classroom. [Tr. at 490].

94. The Parent hired a new advocate on ***. [R.Ex. 49 at 2438].

95. On ***, the Parent alleged for the first time that the special education teacher and the aide ***. [R.Ex. 50 at 2271].

96. The Student was not *** by WISD staff on ***. [R.Ex. 50 at 3792, 4512].

97. On ***, the Parent sent an email to the *** principal concerning ***. The Parent alleged that ***. [P.Ex. 36 at 567; R.Ex. 51 at 2391-2393, 3719-3721].

98. The Parent never complained to the special education teacher, the general education teacher, or administrative staff about the Student's *** at the time of ***. [J.Ex. 51 at 3720; Tr. at 534].

*** – ARDC Meeting

99. On ***, the ARDC convened to review the completed FIE report and discuss and develop the Student's program, including discussion of in-home and parent training and revisions to the Student's BIP. The Parent attended with assistance of an advocate. [J.Exs. 22 and 23; Tr. at 215, 425-426].

100. The speech evaluation component of the FIE used four standardized norm-referenced testing instruments to assess the Student on ***. The Student exhibited excellent articulation and above-average vocabulary scores, displayed meaningful correct statements using correct grammar, and exhibited age-appropriate auditory processing and pragmatic skills. As the Student's articulation, pragmatics, semantics, syntax, and auditory processing skills met or exceeded chronological age expectations, the Student did not require speech therapy services. [J.Ex. 21 at 1233-1237].

101. ARDC participants at the meeting reviewed the psychological evaluation component of the FIE. TCC psychologist, Dr. ***, determined that the Student met criteria for a diagnosis of ADHD and ***, ***. ***, Dr. *** included a "rule out" diagnosis of ***. The psychologist's report noted that the Student exhibits a serious *** upon the Student. [J.Exs. 21 at 1244-1253 and 22 at 1053-0158; Tr. at 52-56, 61-62].

102. Dr. *** recommended transitioning the Student into the general education environment. Based on previous history, the Student never functioned in the mainstream setting without severe behavior problems. The psychologist recommended placement in a self-contained classroom with a teacher and aide for as long as the Student continued "acting out" behavior. Efforts should continue to transition the Student to the general education environment gradually, but without "acting out" behavior from the Student. Anger outbursts should be immediately redirected without direct confrontation or back-and-forth arguments. Due to *** on teachers and

parents, the psychologist recommended *** from the Student. *** should be used as a last resort to ***, or to ***. [J.Ex. 21 at 1251].

103. Dr. *** believes that the Student's *** ***. [J.Ex. 21 at 1252-1253; Tr. at 133-134, 137].

104. The FIE's evaluation for in-home training and parent support took place in the Student's home on ***, and the completed report issued on ***. Two TCC in-home trainers observed the Student, the Parent, *** in the home setting. The Student had increased disruptive behaviors in the school setting when compared to the home environment, likely due to the increased task demands and transitions in the school setting. Recommendations included individualized parent training and support sessions *** every *** weeks by an in-home trainer at the ***. [J.Ex. 21 at 1256-1263].

105. TCC Behavior Specialist, ***, has a master's level degree in counseling and development, is an LPC, a certified special education teacher and a certified school counselor with extensive training in behavior. Ms. *** performed the FBA component of the FIE on ***. The FBA data included input from multiple sources of observation, teacher input, and parental input. Based on the data, the behavior specialist found the primary function of the Student's maladaptive behavior served to escape a setting or task and/or gain adult attention. [J.Ex. 21 at 1271].

106. The behavior specialist reviewed information from *** – ***, or *** school days. The Student's special education teachers and aide collected the data using a ***. The *** collected information on the time, context, antecedent, behavior, consequence, and reaction of the Student. The Student's attendance during this period included the following: Days Attended (in full or part) – ***; Full Days – ***; Absent – ***; *** – ***; Tardy – ***; Left Early – ***; and Campus Early Release – ***. [J.Ex. 21 at 1265-1266; R.Ex. 74].

107. The Student exhibited aggressive behavior on *** of the *** days attended (***) and zero incidents on *** days (***). Aggressive episodes averaged *** minutes in duration and took place during classroom and independent work as follows: a) *** – ***; b) *** – ***; and c) *** – ***. [J.Ex. 21 at 1267].

108. The Student exhibited *** on *** of the *** days attended (***) and zero incidents on *** days (***). The *** averaged *** minutes in duration and took place during classroom and independent work an average of *** times a day. [J.Ex. 21 at 1267].

109. The Student exhibited *** behaviors on *** days of the *** days attended (***) of days) and had zero incidents on *** days (***) of days). The *** episodes averaged *** minutes in duration and took place in the classroom and independent work an average of *** times per day. [J.Ex. 21 at 1268].

110. The Student's targeted behaviors took place most frequently *** with *** of the behaviors occurring between ***. [J.Ex. 21 at 1269].

111. Based on the collected data, the behavior specialist recommended additional interventions, strategies, and supports for the Student: a) ***; b) ***; c) ***; d) ***; e) ***; and, f) ***. [J.Ex. 21 at 1271-1272].

112. TCC Behavior Specialist, Ms. ***, trained the special education teacher and aide on the Student's BIP initially and on an on-going basis. When questions arose, Ms. *** would respond. [Tr. at 155-158].

113. The *** ARDC meeting began in the morning and recessed after several hours when Petitioner requested mediation. Petitioner made the mediation request with the TEA in the afternoon, but revoked consent to share information with the advocate, and withdrew the mediation request in the evening. [R.Ex. 38 at 5022-5024; R.Ex. 52 at 4196-4197; Tr. at 446-447, 536].

114. The Parent made a third request for *** on ***. On ***, the District planned a second ARDC meeting with an IEP facilitator to address ***. [R.Ex. 52 at 2358, 4196-4197, 4467-4468].

115. On ***, the District made another attempt to schedule an ARDC meeting to continue the assessment review, develop programming, and consider the Parent's request for ***, tentatively set for ***. Before this meeting could take place, the Parent filed this due process complaint on March 2, 2016. The parties proceeded to mediation on March 11, 2016, but did not resolve this dispute. [R.Exs. 36 at 5025, 55 at 3148, 3362 and 56 at 4104].

116. The ARDC was not able to convene the planned second *** ARDC meeting with an IEP facilitator because the Parent filed the first due process hearing complaint on ***. On the same date, the Parent also filed a complaint with TEA and hired a new advocate. On February 23, 2016, the new advocate filed an amended due process complaint, but on February 24, 2016, the Parent requested dismissal without prejudice. The first due process docket was dismissed without prejudice on February 24, 2016. [R.Exs. 53 at 2298, 3325-3326 and 67 at 5098-5138].

117. On ***, the District attempted to schedule another ARDC meeting for ***, to continue the assessment review, develop programming, and consider the Parent's request for ***. Before this meeting could take place, the Parent filed the current due process complaint on March 2, 2016. The parties participated in mediation on March 11, 2016, but were unable to resolve this dispute. [R.Exs. 36 at 5025, 55 at 3148, 3362 and 56 at 4104].

***** – *** and *****

118. On ***, ***, ***. [R.Ex. 41; Tr. at 708].

119. ***, ***, credibly testified at the due process hearing. The *** has five years of experience with *** and an extensive *** background of *** years of service. The *** duties include multiple areas of ***. [Tr. at 646-647].

120. The Parent made allegations against WISD that the Student ***. These allegations stem from the. *** of the allegations included *** Parent and Student ***. *** ruled out the allegations. [P.Exs. 42 and 49; R.Ex.41; Tr. at 313, 647-648].

121. During ***, the Student approached ***. [Tr. at 649].

122. In ***, ***, a ***. The Student had not ***. The *** also concerned allegations that the Student “****.” Ms. *** interviewed the Parent ***. The Parent informed Ms. *** that the Student currently received therapy for mental health issues and signed a release for *** to obtain medical information. Within *** hours, the Parent revoked the consent. [Tr. at 654-655, 658-659].

123. Because the Parent revoked the medical consent, Ms. *** was “unable to determine” ***. Without ***. [Tr. at 654-655, 658-659].

124. *** WISD or its staff concerning the Student during the *** school year. The *** involved allegations against the *** grade teacher who ***. WISD Superintendent *** recalled at hearing that ***. [R.Ex. 709].

125. Ms. *** confirmed at the hearing that no one at WISD ***. *** believe that WISD is a safe place for children and have no concerns about the safety of WISD for children. [Tr. at 650 and 656].

*** – Private Therapy

126. In ***, the Student began therapy with ***, a licensed professional counselor (“LPC”) in ***. Ms. *** primarily used *** therapy with the Student. The Student’s therapy treatment plan states that the Parent “would like [the Student] to become more able to regulate [the Student’s] behaviors at home and at school, including anger outbursts and crossing [****] boundaries.” The treatment documents do not include a diagnosis of ***. Instead, the LPC determined a primary diagnosis of *** and included a “****” notation. [R.Ex. 59 at 4635-4681].

127. The Student began seeing a psychotherapist, ***, on ***. As of the date of the hearing, this therapy continued. Psychotherapist *** is a licensed clinical social worker (“LCSW”) specializing in treating anxiety in ***. Licensed for *** years, psychotherapist *** blends therapy approaches, including the “****” approach developed by Peter Levine. The psychotherapist attended the *** “****” over the past four to five years. During the hearing, the psychotherapist was unsure whether *** regulates “****.” [P.Ex. 51; Tr. at 604-606, 621-622].

128. While working with the Student, psychotherapist *** observed many symptoms of someone who has experienced “****” or trouble with focus, connection, and nervousness *** “**** in the background.” The psychotherapist made the *** diagnosis in part through reliance on the Parent’s report of information and past history as well as direct work with the Student. At hearing, the psychotherapist acknowledged that the Student’s statements at times appeared rehearsed or rote. The psychotherapist diagnosed the Student with ***, a diagnosis of *** is also

appropriate because that diagnosis is more pervasive. [P.Ex. 30 at 1004; R.Exs. 33 at 4866-4869 and 34; Tr. at 625-626, 628-269].

129. *** is not recognized by the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) -IV or DSM-V diagnostic manuals. A *** ***. Psychotherapist *** explained that research by ***, a leading scientist on the subject of ***, showed that individuals who have *** ***. If an individual is “***.” [Tr. at 623-625].

130. Initially, psychotherapist *** held family sessions with the Parent and the Student. Currently, the psychotherapist provides *** therapy of ***-minute sessions with the Student. [Tr. at 606-607].

131. On ***, the Parent met with ***, LPC, in ***. Progress notes state that the Parent “claims that [the Student] has been given a diagnosis of ***,” and “spent the session describing [the Student’s] behavior.” The Parent brought over 100 pages of information from the school and psychologist. The LPC used the diagnoses from Dr. *** of “***,***” and “ADHD, Combined Presentation, 314.01 (F90.2) (Active).” [R.Ex. 61 at 4582].

132. LPC *** met with the Parent and the Student on ***. The Parent and LPC disagreed about how to work with the Student and the LPC offered referral to other counselors. The LPC did not diagnose the Student with ***. Instead, the progress notes specify ***” and “Attention-deficit hyperactivity disorder, combined type (Active).” [R.Ex. 61 at 4583].

***** – Request for Independent Educational Evaluations**

133. The Parent disagreed with the psychological evaluation and the FBA during the ARDC meeting on ***, and requested an Independent Educational Evaluation (“IEE”) for both evaluations. WISD sent the Parent the IEE criteria on ***. [J.Ex. 23 at 5304; R.Exs. 52 at 4467 and 53 at 4483].

134. On ***, WISD rescheduled the *** ARDC to reconvene on ***. The Parent verbally agreed to the new ARDC meeting date and WISD agreed to the Parent’s request for an IEP facilitator from TEA. The ARDC planned to complete review of completed assessments, to develop the Student’s program, and to consider the Parent’s request for *** at the reconvened meeting. [R.Ex. 52 at 2232, 4196-4198, 4435-4436; Tr. at 447].

135. On ***, the Parent selected two providers for the IEE: a) psychological – ***, a psychologist in ***; and b) FBA – ***, a Board Certified Behavior Analyst (“BCBA”) in ***. On ***, the Parent changed the psychological evaluator request to ***, a psychologist in ***. WISD confirmed that the two selected providers met the District’s IEE criteria on ***. On the same date, the Parent agreed to contact the providers and start scheduling the evaluations. [J.Ex. 24; R.Ex. 38 at 5017, 5019].

136. The Parent never contacted *** for the FBA evaluation. [Tr. at 451, 454].

137. On ***, the Parent consented to release records to the BCBA, Mr. ***, to begin the FBA IEE and the BCBA reviewed the District's *** FBA. The TCC Special Education Director contracted with the BCBA and made tentative plans for the in-school observations and interviews to take place at *** on ***. On ***, the BCBA called the Parent to schedule the in-home observation, but the Parent did not want to proceed with the FBA IEE. [R.Ex. 66; Tr. at 588-589, 592].

138. The BCBA *** testified, credibly, at the due process hearing. The BCBA found the District's *** FBA helpful for behavior analysis. The FBA report included descriptive information and included data on the number of times per day or per week that the Student engaged in targeted behaviors of aggression, ***, and ***. Analysis graphs also yielded data on the Student's behaviors by time of day and included antecedent events. This data is helpful for scheduling school observations during periods of higher frequency when problem behaviors are more likely to occur. The BCBA agreed with the FBA report conclusion that the Student's behavior functioned as escape behavior, but did not find data support for the conclusion that the behavior functioned to gain attention. The BCBA acknowledged that FBA evaluator may have considered teacher anecdotal information that would not be reflected in the data reporting. [Tr. at 580-583].

139. BCBA *** described the impact of *** on a student's behavior. *** produces emotions, such as anxiety. An anxious person may reach a "threshold" beyond which the individual acts out more quickly than if not anxious, or beyond which the individual "can't continue doing what they're asked to do." Anxiety also may cause a person to reach the point of engaging in a problem behavior but the fact that a person chooses aggression, ***, or destructive behaviors is because those behaviors have been reinforced in the past by "enabling them to get what it is they want." [Tr. at 584-586].

140. BCBA *** could not offer an opinion on whether the ***, a private placement, would be an appropriate place for a student with behavior issues. Mr. *** was familiar with difficulties other parents had in gaining admission for students with behaviors similar to those exhibited by the Student and did not believe that the private school was set up to treat students with aggression and dysfunctional behaviors. [Tr. at 589-591].

141. The *** is a private day school in ***, and is located about *** miles from the District. The WISD Superintendent does not think that this day school is appropriate for the Student, but would have no objections if the ARDC determined that the Student should be placed in a private placement. The Student's ARDC did not have a chance to consider a request for placement of the Student at the ***. [Tr. at 716-718].

142. On ***, psychotherapist *** prepared a letter for the Parent stating the *** diagnosis, the ***, and the recommendation for continued therapy for the Student. The psychotherapist also recommended continued *** until the Student is able to handle a more stressful environment. In the psychotherapist's opinion, forcing the Student to return into an

“environment that was shown to be intensely anxiety provoking could cause irrevocable harm.” This letter asked that informed consent be sent to the psychotherapist if “some entity would like to correspond further with this office.” [P.Exs. 30 at 1004, 34 at 613; R.Ex. 33 at 613; Tr. at 615-617].

143. The Parent did not give informed consent for WISD to communicate with psychotherapist ***. Respondent requested and received the psychotherapist’s notes by subpoena issued on ***. [Pleading file; R.Ex. 33 at 4851; Tr. at 633-635].

144. Psychotherapist *** prepared a medical evaluation report requesting *** (from *** to ***) based on diagnoses of “****,****” and “ADHD, Predominately Hyperactive-Impulsive.” The ARDC has not had the opportunity to consider this new information during the pending litigation. [R.Ex. 38 at 5000-5001].

145. Petitioner did not withdraw the possibility of *** as appropriate for the Student. The discussion regarding *** and possible private placement during the Resolution Meeting does not preclude the possibility that the Student may currently require ***. [R.Ex. 36; Tr. at 720-721].

146. The attempted mediation of this dispute took place on March 11, 2016, and required a full day. The parties were not able to resolve the dispute in the mediation session. [Tr. at 718].

147. Petitioner filed the amended complaint in the current docket on March 20, 2016, and the Resolution Meeting took place on March 31, 2016. At that meeting, the District offered all items of relief requested by Petitioner in this dispute in an effort to resolve the dispute, including private placement at the ***. Petitioner declined the offer. [R.Ex. 36; Tr. at 714-716].

148. The District did not receive notice of the Student’s intent to seek private school tuition prior to the Parent’s removal of the Student from school in *** and has never rejected a request from Petitioner for private placement. [R.Ex. 18 at 1189].

149. The Parent’s actions delayed WISD’s efforts to obtain assessment and review the same at ARDC meetings by withholding consent for evaluation, giving partial evaluation consent, withdrawing evaluation consent once given, and withholding permission to obtain medical and therapy records. [J.Exs. 9, 10, and 18; R.Exs. 43, 45 and 73].

DISCUSSION

Applicable Law: Free Appropriate Public Education (“FAPE”)

The IDEA does not require a school district to maximize the educational potential of a student with a disability, but instead guarantees a “basic floor of opportunity” with specialized instruction and related services that are individually designed to provide an educational benefit.⁷ The education must be likely to produce progress rather than trivial advancement.⁸

The U.S. Supreme Court applies a two-part test to evaluate whether a school district has provided a FAPE. The first inquiry is whether the school district complied with the IDEA’s procedural requirements. The second inquiry is whether the student’s IEP is reasonably calculated to confer educational benefit to the student.⁹

A hearing officer must make a determination that a student did not receive a FAPE based on substantive grounds.¹⁰ When procedural flaws are alleged, a hearing officer may find a denial of a FAPE only if the procedural flaws impede the student’s right to a FAPE, result in loss of an educational benefit, or seriously infringe upon the parents’ opportunity to participate in the development of the IEP.¹¹

The IDEA presumes that the school district’s educational program is appropriate and the party challenging the appropriateness of a school district’s program bears the burden to show why the IEP was inappropriate.¹² The Fifth Circuit established four factors for the substantive inquiry into the appropriateness of a Student’s educational program:

- The program is individualized on the basis of the student’s assessment and performance;
- The program is administered in the LRE;

⁷ *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

⁸ *See Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 455 (6th Cir. 1993), *cert. denied*, 133 S. Ct. 1600 (2013).

⁹ *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

¹⁰ 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(1).

¹¹ 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2).

¹² *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff’d on other grounds sub nom.*, *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984).

- The services are provided in a coordinated and collaborative manner by the key stakeholders; and,
- Positive academic and non-academic benefits are demonstrated.¹³

The factors serve as indicators of the appropriateness of an educational program and must not be applied in any specific way.¹⁴ The four factors are intended to guide a court in a fact-intensive inquiry to evaluate whether an educational program conferred educational benefit.¹⁵

Substantive Compliance

Petitioner challenges the IEP development beginning in ***, alleging that the program offered by the District failed to meet the Student's needs. Respondent asserts that the IEP development process represents concerted effort by the District to develop and to place the Student in a program of services that are specifically designed to meet the Student's serious behavioral needs.

A. Individualized Program for Academic and Behavioral/Emotional Needs

At the time of the Student's *** grade year in ***, the District offered a comparable program of services to the Student's previous educational program and private setting in *** based on the limited information and records from the previous *** school system. At this point, the District began efforts to get additional assessment, but the Parent resisted. The District sought a full FIE with psychological, counseling, in-home and parent training, and assistive technology assessments. Ultimately, the District obtained parental consent for all the assessment components, but the ARDC did not have the opportunity to review the evaluations prior to the Parent's first due process hearing request in early ***.¹⁶

Between *** and ***, the District convened *** ARDC meetings. These meetings included multiple participants with the Parent as an active participant in each meeting. The ARDC meetings considered input from the Parent, previous schools, teaching staff, education

¹³ *Michael F.*, 118 F.3d at 247-249.

¹⁴ *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

¹⁵ *Id.*

¹⁶ R.Ex. 38 (Parent's advocate filed the first hearing docket, Docket No. 154-SE-0215, on February 10, 2016. After the Parent fired the advocate, the Parent requested dismissal of the docket on February 24, 2016.

specialists, and current assessments. The Parent participated fully in this process, attended the ARDC meetings, gave input into ARDC decisions, and had assistance of advocates and legal counsel.

As the Student's year evolved, The ARDC considered the Parent's multiple concerns and received new information for IEP and BIP revisions from the Student's educators. The ARDC revised the Student's BIP *** times and added new goals and objectives at meetings held on ***, ***, and ***. Goals and objectives specifically targeted the Student's areas of academic weakness and supplemented the grade-level TEKS. The ARDC planned discussion of additional goals and objectives at the *** ARDC meeting.¹⁷

The Student's ARDC also developed the Student's BIP from a variety of sources including information from previous schools, the Parent, teachers, using the assistance of a behavior specialist from TCC. The behavior specialist attended all the Student's ARDC meetings and gave input to the ARDC on additional strategies. As the BIP evolved, the behavior specialist completed the FBA to give updated information to the ARDC regarding the Student's behavioral needs.

Based on the above evidence, I conclude that the District's program of services was individualized for the Student.

B. Least Restrictive Environment (“LRE”) and ***

The LRE requirement of the IDEA requires school districts to educate students with disabilities to the maximum extent possible with non-disabled students. Special classes, separate schooling, or other removal of disabled students from the regular education classroom occurs only if the nature or severity of a student's disability prevents education in regular education with the use of supplementary aids and services.¹⁸ The LRE ***, but there is not an ***.¹⁹ ***.²⁰

¹⁷ Tr. at 554.

¹⁸ 34 C.F.R. § 300.114(a)(2).

¹⁹ 34 C.F.R. § 300.116; *See, White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003).

²⁰ *Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 91 F.3d 689 (5th Cir. 1996 *cert denied*, 519 U.S. 1111(1997)).

As the Student entered the District ***, the Student entered from a private school placement. The Student's ARDC offered an initial placement comparable to the program in the Student's previous setting – a *** classroom with a special education teacher and *** aide – based on the abbreviated information that the District had at that time. ***, but the ***.

The record before me established that *** to prepare for the Student's placement and chose ***. ***. As the year progressed, the District granted the Parent's request to ***, even with the increased cost ***. ***.

Parent did not acknowledge the Student's serious behavioral needs during this litigation. Instead, the Parent believes that the Student had been “cured” of maladaptive behaviors prior to re-enrollment in WISD. The Parent believes that the Student should have been placed directly into a general education classroom on the ***. A review of the record testimony and documentary evidence, however, does not support this conclusion. Petitioner did not present evidence to support this theory.

I conclude that Petitioner did not meet the burden to prove that the District's *** classroom was an inappropriate placement or that it was not the LRE for the Student.

C. Collaboration and Coordination by Key Stakeholders

Teaching staff and administrators from the District and TCC made consistent collaborative effort to work with the Parent to develop and implement the Student's *** grade program. When the Parent and advocates gave input into this process, educators considered the input. The Student's ARDC meetings included the TCC Special Education Director, the TCC Behavior Specialist, and the WISD Superintendent of Schools in every ARDC meeting.

After review of this large record consisting of documentary, audiotape, and video evidence, I conclude that Respondent made consistent and collaborative effort to work with the Parent to support, develop, and change the Student's program during this period. Petitioner failed to prove otherwise.

D. Positive Academic and Non-Academic Benefits

Petitioner believes that the Student gained neither academic nor non-academic benefit under the Student's *** grade program. Academically, Petitioner believes that the Student's grades are at

the lowest level for passing and points to limited graded classwork examples to support those grades. Behaviorally, Petitioner challenges the consistency of daily behavior information, the Student's behavior outbursts, and *** as proof that the Student did not make progress on behavior in the District's program. Petitioner also challenges the District's application of behavior strategies by the Student's special education teacher and aide, alleging an inconsistent approach to helping the Student access the general education program.

Respondent points to the Student's academic program tied to grade-level TEKS, the development of academic goals and objectives for the Student's few areas of academic need, detailed IEP progress reports of behavior, and testimony of the Student's educators to show that the Student made progress on academic and behavior-related goals. For ***, the Student received the *** program and educators noted the Student's ability to apply this curriculum in the Student's day and immediately after ***. At the hearing, the special education teacher described how the Student applied this curriculum *** with a non-disabled peer.²¹ The Student's progress reports show that the Student mastered one *** goal during the *** grade year, the ability to ***.²²

²¹ Tr. at 512-513.

²² R.Ex. 72.

Procedural Compliance

A. Transfer Regulation Compliance

The IDEA and its implementing regulations provide specific requirements when a disabled student transfers from *** with an IEP in effect from the previous public agency. The new public agency *** must provide the disabled student with a FAPE that includes services comparable to the services described in the disabled student’s IEP from the previous public agency, in consultation with the parents, until the new public agency: 1) conducts an evaluation (if deemed necessary); or, 2) develops, adopts, and implements a new IEP.²³ According to the Department of Education, “comparable services” are “similar” or “equivalent” services and the disabled student’s previous IEP should be implemented to the extent possible.²⁴

Under the facts of this dispute, the initial ARDC meeting took place on ***, and the ARDC reconvened *** days later on ***, after obtaining additional information from the Student’s previous placement in ***. The evidence established that not all required ARDC members attended the initial ARDC meeting, as well as a typographical error in the documentation, both procedural errors. The ARDC reconvened within a two-day period and I find that these procedural violations were *de minimis* in the development of the Student’s program.

The ARDC used all the information available from the *** setting and from the Parent to make the determination that additional assessment was needed for the Student’s unique needs. The Parent resisted the District’s request for additional evaluation, even though the District had authority to determine whether or not new evaluation was necessary.²⁵ Efforts to obtain all records from *** from *** and *** did not produce requested information. Based on all available information at that time, the District put a program in place that delivered a FAPE to the Student.

B. IEP Revisions

²³ 34 C.F.R. § 300.323(f) applies to transfer students who move within a school year but provides guidance to school districts for all incoming students.

²⁴ *Letter to Campbell*, 213 IDELR 265 (OSEP 1989); 71 Fed. Reg. 46,681 (2006).

²⁵ See 34 C.F.R. § 300.323(f) (“if determined to be necessary by the new public agency”).

As previously discussed, WISD reviewed and revised the Student's program by means of *** ARDC meetings that included review of new information and data. The first *** meetings are in the nature of a *** ARDC meeting as the ARDC reviewed the Student's previous programming and data from *** prior to ***, the Student's first attendance day.²⁶

The *** ARDC meetings held in *** added new IEP goals and objectives (based on new information from the Student's current educators) and included plans for future IEP revisions to the Student's goals and objectives after completion of new evaluation data at the ARDC meeting on ***.

The ARDC made changes to the Student's BIP at each successive meeting to refine how the Student's maladaptive behavior would be addressed. These changes included the creation of *** to provide positive reinforcement and to provide daily data regarding behavioral strategy success.

C. ARDC Meeting Documentation

Petitioner alleges that the District did not provide accurate documents to the Parent on a timely basis and that persons not in attendance at ARDC meetings signed the ARDC documentation.

Examination of this voluminous record reveals that the TCC Diagnostician, ***, attended the ARDC meeting on ***, signed in on the sign-in sheet, but did not sign on the signature page. As a non-mandatory ARDC member, the diagnostician was not required to sign the signature page. Nothing in the IDEA regulations requires *all* ARDC participants to sign off on the meeting documentation. The TCC Special Education Director, ***, was qualified to stand in as the required assessment individual at this ARDC meeting.²⁷

The record also shows that Mr. Tatgenhorst, co-counsel for Respondent, did not sign the paperwork for the *** ARDC meeting on ***, but did sign the sign-in sheet. As a permissible ARDC attendee, Mr. Tatgenhorst was not required to sign the ARDC documents of this meeting. Mr. Tatgenhorst's participation and presence in this meeting is documented by the sign-in sheet.

²⁶ J.Exs. 8, 9, and 10.

²⁷ 34 C.F.R. §300.321(a) (5) requires the ARDC to include an individual who can interpret the instructional evaluation results. The TCC Special Education Director is qualified to serve in this capacity. Tr. a316-317.

Petitioner failed to meet the burden to show that any individual improperly signed the Student's ARDC documentation. The two instances of failure to sign off on ARDC documentation by Ms. *** and by Mr. Tatgenhorst constitute minute procedural violations at best. Neither omission resulted in educational harm for the Student and did not impact the Parent's participation in the two ARDC meetings.²⁸

D. BIP and Appropriate Behavior Techniques

The Student's BIP employed a variety of positive *** and techniques to help the Student with behavior in the school setting. The ARDC refined these techniques as the Student's *** grade year progressed. The TCC Behavior Specialist gave on-going training and support to the Student's special education teacher and the aide on the BIP implementation and behavior management techniques.

Petitioner did not offer evidence of any deficiencies of the District's behavior management techniques or the BIP and did not meet the burden to prove otherwise.

E. Placement

Petitioner alleges that the placement of the Student in the *** classroom caused the Student to *** or ***. The testimony and documentary evidence does not support this conclusion.

The Student's maladaptive behavior patterns of ***, ***, ***, and *** began in *** and continue forward. The Student's maladaptive behavior patterns stem from ***.²⁹ This history also shows *** ***. I conclude that both *** and misbehavior issues permeate the Student's *** academic career.

Petitioner presented evidence from *** ***, LCSW, to support a diagnosis of *** and on-going need for private therapy to address ***. Mr. *** recommends a more restrictive placement than WISD's *** classroom for the Student. Mr. *** first interacted with the Parent and the Student around the time of the first due process filing. Mr. *** made the *** diagnosis *after* the Parent filed the second due process complaint.³⁰ This diagnosis was based in part on information

²⁸ See 20 U.S.C. §1415(f)(3)(E)(ii).

²⁹ See, testimony of TCC Psychologist ***; Tr. at 87-89, 136.

³⁰ P. Ex. 33 (letter from *** dated ***); Pleading file, Initial Scheduling Order (due process request filed on February 29, 2016, received and docketed by the Texas Education Agency on March 1, 2016).

from the Parent. Of note, other medical professionals working with the Student have not made a *** diagnosis.³¹ Mr. *** made no educational programming recommendations and Petitioner presented no evidence that a *** diagnosis would require changes to WISD's educational program for the Student.

The evidence in this proceeding does not show that the WISD placement caused *** to the Student. The evidence does, however, support *** *** with the Student since ***. Individuals who ***** may *** that ***, but these *** are difficult to identify and to predict.³² I find that Petitioner failed to meet the burden to prove that WISD's placement negatively impacted the Student and caused *** or ***.

F. Parent Participation

During the pertinent period of this dispute, the record shows that the Parent fully participated in all *** ARDC meetings, attending most ARDC meetings with one or more advocates. The Parent and advocates gave input into this process, posed questions, made recommendations, suggested changes, and fully engaged in all ARDC meeting discussions during the long ARDC meetings.

Neither the IDEA nor its implementing regulations prohibit the participation of a public agency's attorney at ARDC meetings, even when a parent is unrepresented by legal counsel and has not requested mediation or a due process hearing.³³ In this dispute, the Parent notified the ARDC that advocates or an attorney would come with the Parent for the meeting of ***. After that time, the District elected to have legal counsel travel from Austin, Texas, to WISD for all subsequent ARDC meetings held for the Student.

When the Parent attended the ARDC meeting on ***, the Parent was not accompanied by either an advocate or an attorney. The Parent received notice that the District's legal counsel would attend the meeting. Petitioner alleges that the District's legal counsel ran this meeting. However, the District's audio recording *** of the meeting fail to support this allegation. The attorney's

³¹ J.Ex. 21 at 1244-1252; R.Exs. 59, 61 at 4582, and 71.

³² Tr. at 59-60.

³³ *Letter to Diehl*, 22 IDELR 734 (OSEP 1995).

presence did not add to or cause the tension and emotion vented by the Parent in this meeting.³⁴ I conclude that the ARDC worked collaboratively with the Parent at all ARDC meetings for this Student.

G. Requests for ***

In Texas, *** may not be provided for ***.³⁵ The Parent made requests for *** on three occasions in this dispute. The first request, made on ***, included a physician's note requesting *** for *** week and was insufficient to *** for such services. By the time of the ARDC meeting on ***, the Parent withdrew this request, did not provide any additional information from a physician, and agreed to the ARDC recommendation for placement in the *** classroom.³⁶

The Parent again requested *** on ***, and provided no information to support the request.³⁷ The ARDC, therefore, had no information to substantiate or to evaluate the request for *** at the next meeting held on ***.

The Parent's third *** request, made on ***, resulted in a request for a facilitated ARDC meeting to address this issue. The process came to a standstill with the filing of the Parent's first due process hearing request. After the dismissal of that docket, the evidence shows that the District scheduled another ARDC meeting for consideration of the *** request.³⁸ Before that meeting took place, the Parent filed the instant dispute.

There is evidence that the parties discussed the *** request during this pending litigation and that the Parent rejected an offer of *** on ***, followed by another offer from the District for *** on ***.³⁹ Based on the record evidence, I do not find that the District failed to consider – or to ultimately reject – the Parent's requests for *** for the Student.

H. IEE Request

³⁵ ***.

³⁶ J.Ex. 10.

³⁷ R.Ex. 43 at 2496.

³⁸ R.Exs. 54 at 2209 and 55 at 3148.

³⁹ P.Ex. 44; R.Exs. 36 at 5034, 5038 and 38 at 5009.

The Parent made a request for an IEE on ***, and the District granted that request and provided criteria for selection of a provider on ***.⁴⁰ The record shows that the Parent selected providers, the District approved the providers, the Parent modified the request, and the District confirmed the ultimate selection of *** for the FBA and *** for the psychological IEEs by ***.⁴¹ The Parent never pursued the psychological evaluation; the Parent contacted and scheduled the FBA but later refused to allow the observation by Mr. ***.⁴²

I do not find that Respondent delayed the IEE process in this dispute. Petitioner did not sustain the burden to prove otherwise.

Counterclaim

Respondent's counterclaim raises the issue of whether Petitioner failed to collaborate as a meaningful participant in the ARDC process, and if so, asks for relief. Petitioner believes that the Parent acted at all times in accordance with the Parent's rights. Petitioner also believes that the District made personal attacks against the Parent while the Parent navigated the ARDC process and tried to work with the District.

There is evidence in this large record that the Parent worked collaboratively with the District at the beginning of the Student's *** grade year. These efforts, however, completely disintegrated with the Parent's increasing demands and *** directed against WISD that culminated in ***. Ultimately none of the allegations withstood *** and ***. After the Parent refused to return the Student to school, the Parent continued demands and exercised the right to file two hearing complaints.

The record before me also shows that the Parent rejected the District's attempts to meet all demands in the current docket through settlement offers and negotiations. Both parties entered those documents into this record.⁴³ These documents conclusively support Respondent's

⁴⁰ R.Exs. 52 at 4467, 4483 and 53 at 2298, 2548.

⁴¹ R.Exs. 24, 38 at 5017, 5019, and 52.

⁴² R.Ex. 66; Tr. at 451, 454.

⁴³ P.Ex. 44; R.Ex. 36.

contention that the District offered *all* relief sought in this due process filing in an effort to meet the Parent's demands – contrary to the Parent's deposition testimony regarding the requested relief.⁴⁴

I conclude that the Parent's failure to act collaboratively as a meaningful ARDC participant hindered the District's ability to finish review of assessments, revise, and develop the Student's program to address the Student's current needs.

A. Private Tuition Reimbursement

To consider a parental request for private school tuition, a special education hearing officer must consider whether the District's placement is appropriate and provides a FAPE; and, if not appropriate, whether the private placement is appropriate and, whether equitable considerations exist.⁴⁵

In the dispute currently before me, Petitioner did not meet the burden to prove a denial of a FAPE by WISD. The record clearly shows that Petitioner did not provide prior notice of the intent to seek private placement to the District. I also do not find that the ARDC rejected a private placement for this Student.⁴⁶

Petitioner did not offer evidence of the appropriateness of the private school placement sought by Petitioner. The credible testimony in this record from BCBA *** and the WISD superintendent show that this placement is not appropriate and is located approximately *** miles from the Student's residence in ***.

B. ***

Related services include supportive services that enable a disabled student to benefit from a public education.⁴⁷ *** and therapy are not included in the list of related services in the IDEA. The District must provide only the related services *necessary* for a disabled student to receive a FAPE.⁴⁸ While such therapy may be offered as an appropriate related service, the therapy may only

⁴⁴ P.Ex. 44; R.Exs. 36 and 69 at 136-144.

⁴⁵ 34 C.F.R. § 300.148(d); *See, e.g., Florence County Sch. Dist. Four v. Carter*. 510 U.S. 7 (U.S. 1993).

⁴⁶ 34 C.F.R. §300.148(d).

⁴⁷ 34 C.F.R. § 300.34.

⁴⁸ 34 C.F.R. § 300.34(a).

be offered if it is “required to assist a child with a disability to benefit from special education in order for the child to receive a FAPE.”⁴⁹

The record before me does not support a finding that the Student required *** in order to receive a FAPE. While such therapy may be helpful, Petitioner failed to meet the burden to prove that it is necessary for this Student at this time. The Student began receiving *** in ***, after the Student *****. Even with ***, the Student made progress in school without receiving *** as a related service between *** and ***.⁵⁰

CONCLUSION

This Student’s serious behavior continues to impact the Student’s ability to access the general education environment and requires careful management. At times, the Student’s behavior requires ***. These needs are not new and have been present from the start of ***. The record shows that this Student’s school career has been plagued by ***. The *** have disrupted the Student’s academic career. The Student’s behavior problems did not arise at WISD as a result of the special education program and services put in place during the *** school year.

I conclude that WISD provided a FAPE to this Student both substantively and procedurally during this period and Petitioner did not meet the burden to prove otherwise. The *** classroom at WISD is an appropriate placement for this Student.

Respondent met the burden to prove the District’s counterclaim in this dispute and is entitled to relief. In crafting this relief, I note that the Student remains outside the school setting *** at the current time. The ARDC should convene and consider all new information regarding the Student’s current status. This information should include new *** (from *** forward) and new assessment data to develop an educational program for the Student that will allow the Student to access educational services.

Conclusions of Law

⁴⁹ *Questions and Answers on Individualized Education Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 9/01/11).

1. Respondent is the local educational agency responsible for determining the Student's eligibility for special education and related services under the IDEA. 20 U.S.C. §1400, *et. seq.*, and its implementing regulations.
2. Petitioner, as the party who challenged the school district's eligibility determination or offer of services under the IDEA, bears the burden to prove that the Student did not receive a FAPE during the relevant time period from ***, forward. *Schaffer v. West*, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd on other grounds sub nom.*, *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); 34 C.F.R. § 300.101.
3. Respondent's procedural errors in ARDC meeting documentation were *de minimis* and did not impede the Student's right to a FAPE, result in loss of an educational benefit, or seriously infringe upon the Parent's opportunity to participate in the development of the IEP at ARDC meetings held on ***, ***, and ***. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2).
4. Petitioner did not meet the burden of proof to prove a denial of a FAPE by Respondent. Respondent offered a program and services to the Student for the *** school year that delivered a meaningful benefit. *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341 (5th Cir. 2000); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(1).
5. Petitioner did not meet the burden to prove any relief in this dispute. As a result, Petitioner is not entitled to compensatory education services or prospective relief. *Sch. Comm. of Burlington v. Dep't of Edu.*, 471 U.S. 359, 105 S.Ct. 1996, (1985).
6. Respondent's placement of the Student in the *** classroom for the *** school year was the LRE for the Student and provided appropriate staffing and behavior supports to address the Student's serious behavior issues. Petitioner failed to prove otherwise. *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003); 34 C.F.R. § 300.116.
7. Petitioner's failure to act collaboratively as a meaningful ARDC participant in this dispute hindered Respondent's ability to provide educational opportunity to the Student and prolonged this dispute.

ORDERS

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law,

I hereby **ORDER** that the relief sought by Petitioner is **DENIED**.

I further **ORDER** that the relief sought by Respondent in the counterclaim is **GRANTED** as follows:

1. Within 20 calendar days, Respondent **SHALL** convene a meeting of the Student's ARDC meeting, with the Parent in attendance, to review and develop the Student's educational program to support the Student in the WISD *** classroom, or within any other location deemed appropriate for the Student;
2. The ARDC participants **SHALL** review all new information regarding the Student's current status to include, at a minimum, the following:
 - 1) New *** requests (from *** forward);
 - 2) New assessment data (not previously reviewed by the ARDC); and,
 - 3) Any new information from medical or educational providers;
3. The ARDC participants **SHALL** develop an educational program for the Student that will allow the Student to access education services based on current needs.

IT IS FURTHER ORDERED that any and all additional or different relief not specifically ordered herein is **DENIED**.

Signed this 5th day of July 2016.

/s/ Mary Carolyn Carmichael

Mary Carolyn Carmichael
Special Education Hearing Officer

NOTICE TO THE PARTIES

This Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decision made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 34 C.F.R. §300.516; 19 TEX. ADMIN. CODE §89.1185(n).