

DOCKET NO. 180-SE-0219

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

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, STUDENT bnf PARENT and PARENT (“Petitioner” or “Student”) brings this action against the Frisco Independent School District (“Respondent,” or “the School District”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the school failed to provide Student with FAPE during the 2017-2018 school year through the January 2019 proposed IEP by failing to provide the supports and accommodations provided in Student’s Individualized Education Plan (IEP) and by failing to timely include a Behavior Intervention Plan (BIP) in Student’s IEP.

The hearing officer concludes Student received FAPE from the School District during the relevant time period and is therefore not entitled to a reimbursement for private school expenses at school district expense.

II. PROCEDURAL HISTORY

A. Legal Representatives

Student was represented throughout this litigation by Student’s legal counsel Roy Atwood with Atwood Gameros. The School District was represented throughout this litigation by its legal

counsel Nona Matthews with Walsh, Gallegos, Treviño, Russo & Kyle.

B. Resolution Session and Mediation

The parties agreed to attempt mediation in lieu of a Resolution Session. The parties met in mediation on April 23, 2019, but they were not successful in reaching an agreement.

C. Preliminary Motions

In its response to the complaint filed on February 25, 2019, Respondent asserted that the hearing officer lacks jurisdiction to make a finding or ruling on Student's 504 Plan. Following the prehearing conference, the hearing officer issued Order No. 3, summarizing the prehearing conference and stating the issues as she understood them. On March 22, 2019, Petitioner filed an Objection to Order No. 3, specifically in regard to the period of time during which the allegations occurred. The Hearing Officer revised the issues in Order No. 4 issued on March 26, 2019.

III. DUE PROCESS HEARING

The due process hearing was conducted on May 28-29, 2019. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Student's legal counsel Roy Atwood. In addition, PARENT and PARENT, Student's parents, also attended the due process hearing.

Respondent continued to be represented by its legal counsel Nona Matthews, who was assisted by her co-counsel, Jennifer Carrol. In addition, ***, the Executive Director of Special Education for the School District, attended the hearing as the party representative. Both parties filed written closing arguments in a timely manner. The Decision in this case is due August 23, 2019.

IV. ISSUES

A. Petitioner's Issues

Petitioner confirmed the following IDEA issues for decision in this case:

1. FREE, APPROPRIATE PUBLIC EDUCATION (FAPE): Whether the School District failed to provide Student with FAPE during the 2017-2018 school year through the January 2019 proposed IEP¹, specifically with regard to the following:
 - a. IEP: Whether the School District failed to provide the supports and accommodations provided in Student's IEP.
 - b. BIP: Whether the School District failed to timely include a BIP in Student's IEP.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Student's Complaint. The School District contends it provided Student with FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

The School District raises the following additional issues:

1. JURISDICTIONAL: Whether the hearing officer has jurisdiction to resolve claims arising under any laws other than the IDEA, and whether such claims should be dismissed.
2. STATUTE OF LIMITATIONS: Whether any of Student's IDEA claims that accrued prior to February 13, 2018 should be dismissed as outside the one year statute of limitations rule as applied in Texas.

¹ As modified at the due process hearing.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. If the School District cannot offer appropriate services, then reimbursement for private placement and transportation costs.
2. The School District fund private placement prospectively ***.

B. Respondent's Requested Relief

1. Dismiss any claims arising outside the one year statute of limitations rule as applied in Texas; and
2. Dismiss all claims arising under laws other than the IDEA;

VI. FINDINGS OF FACT

1. Student was enrolled in the School District for the 2015-2016 school year ***.² Student was described as a sweet, intelligent kid with good insight.³ Student's intellectual functioning is in the high average range overall.⁴
2. The School District determined Student eligible for a 504 plan on November ***, 2017 while in *** grade at ***.⁵ Student's 504 plan included the following accommodations: frequent breaks; allow Student to respond orally if handwriting is not legible; allow access to sensory items (***); allow Student to talk with counselor as needed; behavior feedback discussed privately; allow Student to take scheduled sensory breaks in ***; allow access to co-writer to produce written assignments; preferential seating; provide additional support in writing as needed; and reminders to stay on task.⁶
3. A neuropsychological evaluation was performed by a private evaluator on Student on

² Joint Exhibit 29 p. 1. (referred to hereafter as JE ___ or JE ___ at ___).

³ Transcript (T) II at 636. (referred to hereafter as T ___ at ___).

⁴ JE 4 at 8.

⁵ JE 2 at 2.

⁶ JE 2 at 7.

January ***, 2018.⁷ Student was diagnosed with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder (ADHD), ***, and dysgraphia.⁸ The evaluator noted memory tasks as a trigger of oppositional behavior and emotional dysregulation in Student.⁹

4. Student's parents, Student's *** teacher, and the private neuropsychological evaluator noted Student routinely exhibits significant deficits in social communication, social reciprocity, and social skills. Student shows rigid and inflexible cognitive and behavioral patterns.¹⁰ Student exhibits arguing, ***, aggressive behaviors, and *** behaviors at home and school. These behaviors are related to Student's diagnosis of Autism Spectrum Disorder (ASD) and ADHD.¹¹ These behaviors are exacerbated by anxiety, which results in stress when Student is required to function in new environments and settings with social demands. The behaviors Student exhibits should be managed through environmental adjustments and/or help regulating Student's affective and behavioral responses rather than traditional forms of punishment.¹²
5. In January 2018, the School District added accommodations to Student's 504 plan. These additions were: chunk assignments into smaller steps; ***; allow for enrichment opportunities when grade level work is completed; allow alternate seating in the classroom (standing to complete work, etc.); allow Student to take stretch breaks, movement breaks, brain breaks each hour; preferential seating during assemblies; ***; and provide Student with ***.¹³
6. Parents initially declined to provide consent for the School District to perform a Full and Individual Evaluation (FIE) because they preferred to obtain a private evaluation.¹⁴ The School District conducted a FIE of Student on April ***, 2018.¹⁵ Student was referred for the FIE by the 504 committee due to concerns regarding Student's behavior and social skills.¹⁶ This evaluation was "informal" due to the outside neuropsychological evaluation.¹⁷

⁷ JE 4 at 1.

⁸ JE 4 at 8

⁹ JE 4 at 8.

¹⁰ JE 4 at 9.

¹¹ JE 4 at 9.

¹² JE 4 at 9.

¹³ JE 3 at 6-7.

¹⁴ JE 29 at 1.

¹⁵ JE 9 at 1.

¹⁶ JE 9 at 1.

¹⁷ JE 9 at 1.

7. Student has difficulty with pragmatic language.¹⁸ Student's adaptive behavior is significantly below age expectations. Adaptive behavior is the degree to which Student exhibits personal and social self-sufficiency.¹⁹
8. The FIE concluded Student met the criteria for Autism and Other Health Impairment (OHI) – ADHD. Student did not demonstrate the need for direct instruction by the speech pathologist at this time.²⁰
9. Student's *** teacher indicated Student struggles to follow directions, comply with rules, work with Student's peers, has difficulty accepting constructive criticism, coping with Student's emotions, and being respectful to authority figures. Student's teacher noted the triggers for Student's difficulties are group work, ***, when Student perceives something as unfair, and when Student does not receive what Student wants.²¹
10. Student's *** teacher indicated prior to Spring Break of 2018, Student was very argumentative with Student's peers. Student also frequently ***. Student's *** teacher indicated Student's defiant and impulsive behaviors improved during Spring 2018. Student was ***.²² After Spring Break, Student no longer argued with the teacher or Student's peers and Student stopped ***.²³
11. In February 2018, Student's ***.²⁴ ***.²⁵ In February 2018, Student *** was more irritable.²⁶ Parent told *** on February ***, 2018, Student had been highly irritable on a daily basis for the past few days.²⁷
12. In April of 2018, Student's behaviors had improved. Parent indicated to the private ***, the school was implementing Student's IEP, Student was making friends in the neighborhood, Student was no longer ***, and Student wasn't as likely to "melt down".²⁸
13. On February ***, 2018, Student was restrained.²⁹ ***. ***. ***. ***. The restraint

¹⁸ JE 9.

¹⁹ JE 9 at 9.

²⁰ JE 9 at 15.

²¹ JE 9 at 11.

²² JE 9 at 5.

²³ JE 10 at 2.

²⁴ Respondent's Exhibit (RE) 17 p. 7 (referred to hereafter as RE ____ or RE ____ at ____).

²⁵ RE 17 at 7.

²⁶ RE 1 at 51.

²⁷ RE 18 at 110.

²⁸ RE 17 at 9.

²⁹ JE 27 at 1.

- lasted a few seconds.³⁰
14. At the end of ***, Student received all As in Student's classes.³¹ Student's reading, writing, and math skills were on or above grade level and continue to be so.³²
 15. On March ***, 2018, Student was upset in *** classroom. Student ***. ***. Student was asked if Student needed a break and Student refused. The school counselor and the principal were called to the room. ***. ***. ***. ***.³³
 16. On March ***, 2018, Student had an incident in ***. Student was upset ***. ***. ***. ***. After Student calmed down Student understood Student's behavior was wrong, ***, and then went back to class.³⁴
 17. The School District held Student's initial Admission, Review, and Dismissal (ARD) Committee meeting on March ***, 2018.³⁵ Student qualified for special education services due to Autism.³⁶ The Individual Education Plan (IEP) included present levels of academic achievement and functional performance (PLAAFPs). It also included social skills goal of when experiencing heightened emotions Student will utilize an appropriate coping skill to de-escalate, in 7 out of 10 observations over a grading period. The special education teacher and general education teacher were to implement this goal. Student's progress on this goal was to be reported concurrent with report cards. Student's progress was to be measured using data and anecdotal notes, discipline records, and teacher observation.³⁷ The ARD committee was to make a determination on developing a Functional Behavior Assessment (FBA) after data was collected.³⁸
 18. Teachers were going to collect ABC (Antecedent, Behavior, Consequence) data with the goal of decreasing physical behaviors and eventually other behaviors.³⁹ The special education teacher for Spring 2018 was trained on how to collect the data by the School District's Licensed Specialist in School Psychology (LSSP) and then the special education teacher trained the other teachers on data collection.⁴⁰ *** were put in Student's IEP to

³⁰ Transcript Volume II at 450-52. (referred to hereafter as T ___ at ___).

³¹ JE 23 at 10.

³² JE 9 at 8.

³³ RE 8 at 12, 13.

³⁴ RE 8 at 18.

³⁵ JE 8 at 1.

³⁶ JE 8 at 3.

³⁷ JE 8 at 7.

³⁸ JE 8 at 9.

³⁹ RE 8 at 16.

⁴⁰ T II at 613.

provide behavior supports to Student and address the behaviors Student was exhibiting.⁴¹ Student's teachers recorded Student's behaviors on a daily point sheet.⁴² Student carried a notebook to each class or activity with Student's point sheet on it for teachers to record Student's compliance or behaviors.⁴³

19. Student's initial IEP had the following curriculum accommodations: frequent breaks; opportunity to respond orally; ***; allow access to sensory items; behavior feedback discussed privately; allow for enrichment opportunities when grade-level work is completed; allow access to co-write to produce written assignments; allow alternative seating in the classroom; preferential seating during assemblies; ***; provide additional support in writing as needed; redirect/reminders to stay on task; allow Student to take sensory breaks; break large assignments into two or more component assignments; and check often for understanding/review/comprehension.⁴⁴
20. Student received an Occupational Therapy (OT) Evaluation from the School District on April ***, 2018.⁴⁵ Student was referred for this evaluation because of sensory processing skills. Student scored in the above average range for visual motor abilities. Student had "some problems" in social participation meaning Student has some social problems with other students.⁴⁶ Student exhibited strengths in the following functional skills areas: functional motor skills, letter formation in handwriting skills, keyboarding skills, sensory processing skills, and self-care skills. Student had difficulty with ***, which can make Student's handwriting difficult to read.⁴⁷ The School District did not recommend OT services because Student was able to complete classroom tasks without the need of additional support.⁴⁸
21. The School District held an ARD meeting on April ***, 2018. Student's IEP was revised to include OHI-ADHD as a qualification for Special Education services.⁴⁹ Student's accommodations were revised from the initial IEP to add the following: proximity away from distractions; visual supports for emotional regulation; provide visual of incentive menu; warn before changes in routine; behavior incentive chart; provide opportunity to earn rewards; set clear expectations, boundaries, and consequences; cool down procedure with visual; access to alternate environment for cool down; opportunity to reflect after frustration; dividing test into sections; graphic organizers for writing; provide scheduled

⁴¹ T II at 614-15.

⁴² T I at 217.

⁴³ T I 318-19.

⁴⁴ JE 8 at 5.

⁴⁵ JE 10 at 1.

⁴⁶ JE 10 at 5.

⁴⁷ JE 10 at 11.

⁴⁸ JE 10 at 11.

⁴⁹ JE 11 at 3.

sensory breaks; offer choices when possible/appropriate; provide close proximity supervision at recess; allow small group administration of tests; blank graphic organizers; allow answers to be dictated; allow for preferential seating; allow small group administration of quizzes; allow Student to type assignments; avoid penalizing for sloppiness for poor penmanship; eliminate or limit copying activities; give notice/warning before change in activities; have Student paraphrase or repeat directions to ensure understanding; provide immediate feedback for social/behavioral supports; and provide note taking assistance.⁵⁰

22. As part of Student's April ***, 2019 IEP, Student was scheduled to receive *** and *** for *** minutes per week in general education.⁵¹ At Student's ***, ***,⁵² ***,⁵³
23. An ARD committee meeting was held on August ***, 2018.⁵⁴ Student's IEP remained the same as Student's previous IEP from April ***, 2018. During the ARD meeting the committee discussed an FBA for Student. Parents requested an FBA immediately, instead of the 45 day timeline and the ARD committee agreed.⁵⁵
24. The School District conducted a speech and language evaluation of Student on August ***, 2018 by an independent provider.⁵⁶ Student's speech skills in the areas of sentence completion, linguistic concepts, word structure, formulating sentences, and recalling sentences were in the above average range.⁵⁷ Student has difficulty with pragmatic or social aspects of language. Student does not follow the rules of conversation like turn-taking or active listening. Student has the most difficulty with ***. When Student ***,⁵⁸
25. The independent provider recommended Student continue to receive speech treatment once a week *** and social skills training. The evaluator stated Student should be taught the skills in an individual setting and then placed in social groups to practice the skills.⁵⁹
26. On September ***, 2018, Student was restrained. ***. ***. ***. ***,⁶⁰ ***. ***,⁶¹

⁵⁰ JE 11 at 7.

⁵¹ JE 11 at 16.

⁵² T II at 482.

⁵³ T II at 442, 467. JE 26.

⁵⁴ JE 12 at 1.

⁵⁵ JE 12 at 22.

⁵⁶ JE 13 at 1.

⁵⁷ JE 13 at 3.

⁵⁸ JE 13 at 6.

⁵⁹ JE 13 at 6.

⁶⁰ JE 27 at 3-4. T II 465-66.

⁶¹ RE 8 at 54.

Teachers were attempting to help Student calm down using Student's various techniques.⁶²

27. Student had *** and Student's emotions were deteriorating in late August and early September 2018.⁶³ Parent notified the School District Student would *** at the end of August 2018.⁶⁴ On September ***, 2018, Student's mother informed Student's *** teacher Student was ***.⁶⁵
28. An Occupational Therapy independent educational evaluation was performed on Student on September ***, 2018. The independent evaluator recommended consultative OT *** weekly as well as assistive technology in the form of a computer or word processor.⁶⁶ Student participates in OT with a private therapist. Student enjoys activity and movement.⁶⁷
29. Sometime between March 2018 and July ***, 2018, Student ***.⁶⁸ In August 2018, Student's ***. By September, ***, Student was having some emotional outburst ***.⁶⁹ Student *** in September 2018. Student's behavior was better for a while, but by October 2018, Student was easily frustrated, yelling at teachers, parents, ***.⁷⁰
30. The School District increased Student's inclusion support for *** from *** once per week to *** twice per week with parent approval on September ***, 2018.⁷¹ The School District amended Student's IEP again on October ***, 2018 with parent approval. The amendment increased inclusion time during *** from *** twice per week to *** three times per week. The School District also added accommodations ***.⁷²
31. On September ***, 2018, Student's *** teacher had to ***. Student was yelling *** and the teacher was unable to calm Student down using the IEP techniques.⁷³ The *** teacher would *** when she had gone through all of the strategies with Student to get Student to calm down, but Student was unable to do so. When the teacher felt Student was a threat to

⁶² JE 34, 35.

⁶³ RE 17 at 22.

⁶⁴ RE 8 at 46.

⁶⁵ RE 5 at 9.

⁶⁶ JE 14 at 2, 15.

⁶⁷ T II at 552-54.

⁶⁸ RE 17 at 7-9.

⁶⁹ RE 17 at 9.

⁷⁰ RE 17 at 10.

⁷¹ JE 15 at 1.

⁷² JE 16 at 1.

⁷³ T I at 291, RE 5 at 18.

***self or others, ***.⁷⁴

32. The School District completed an FBA of Student on October ***, 2018.⁷⁵ Student engaged in the functional behaviors of refusal or disrespect as well as physical aggression to escape un-preferred demands or tasks and social situations. Student exhibited these behaviors when denied access to something or told no, when given a new task, when challenged or teased from others, ***, and ***.⁷⁶ The LSSP who performed the FBA recommended a BIP for Student to address Student's behaviors of refusal and disrespect, physical acting out, and elopement.⁷⁷
33. The School District conducted a FIE on October ***, 2018. The purpose of the evaluation was to determine if Student met eligibility for the additional category of speech impairment.⁷⁸
34. In November 2018, Student was ***, which caused an increase in irritability.⁷⁹
35. On November ***, 2018, Student was restrained. ***. ***. A paraprofessional asked if Student needed a break. Student refused the break.⁸⁰ ***.⁸¹ ***. ***. ***. ***.⁸² ***. ***. ***.⁸³ The assistant principal performed a brief *** restraint. The restraint lasted a few seconds.⁸⁴
36. In response to the incident on November ***, 2018, parent emailed School District staff and notified them Student was struggling over the past few weeks as Student was adjusting to Student's ***.⁸⁵
37. An ARD committee meeting was held on November ***, 2018, November ***, 2018, November ***, 2018, and December ***, 2018.⁸⁶ The IEP developed from these meetings changed Student's qualification for special education services to include speech

⁷⁴ T I at 218.

⁷⁵ JE 18 at 1.

⁷⁶ JE 18 at 10.

⁷⁷ JE 18 at 10.

⁷⁸ JE 28 at 1.

⁷⁹ *** 51.

⁸⁰ *** 52.

⁸¹ T I at 108.

⁸² T I at 413-14.

⁸³ *** 50.

⁸⁴ JE 27 at 5, T II at 472-73.

⁸⁵ RE 8 at 66.

⁸⁶ JE 19 at 1.

impairment.⁸⁷ The IEP added goals related to Student's speech, specifically articulation and pragmatics.⁸⁸ A BIP was included in the IEP.⁸⁹ Indirect OT was included with 2 sessions of consult to monitor sensory strategies over a *** week period.⁹⁰ The IEP included social skills training for *** a day in *** class, inclusion support for *** per week, direct speech training for *** minutes *** times per *** weeks in the general education classroom, direct speech training for *** minutes *** times per *** weeks in the *** classroom, and *** minutes of inclusions support *** per day in the *** classroom.⁹¹

38. Student's December ***, 2018 IEP included a BIP. The targeted behaviors were refusal/disrespect and physical aggression.⁹² The BIP included the following preventions: provide high rates of praise/recognition for expected behavior; create and implement a preventive plan to remove Student to a safe place prior to escalation; teach rules, procedures, and expectations; implementation of monitoring system; scheduled sensory breaks built into schedule; visual supports of expectations and procedures; visual/copy of coping skills; visual cue to prompt volume control; visual support of daily schedule; set goal for expected behavior to work toward; provide visual reminder of what Student is working toward; establish firm limits; give clear choices with clear consequences; monitor closely during loud, large group interactions; provide inclusion support in areas where warranted.⁹³ The teachers were also planning on working with Student on skills prior to escalation and continue to increase Student's coping skills.⁹⁴
39. The November ***, 2018 ARD meeting was limited to one hour due to the time constraints of the people in attendance.⁹⁵ The OT outside evaluator presented at this ARD meeting.⁹⁶ The ARD committee reviewed the outside speech evaluation at the November *** ARD meeting.⁹⁷
40. On November ***, 2018, Student was informed by Student's teacher ***.⁹⁸ When Student returned from the *** teacher's room, *** had already begun. Student was offered ***

⁸⁷ JE 19 at 3.

⁸⁸ JE 19 at 5.

⁸⁹ JE 19 at 19.

⁹⁰ JE 19 at 25.

⁹¹ JE 19 at 26.

⁹² JE 19 at 19, 21.

⁹³ JE 19 at 20.

⁹⁴ JE 19 20, 22.

⁹⁵ RE 8 at 77.

⁹⁶ T II at 686.

⁹⁷ T II at 686.

⁹⁸ T I at 302.

and refused.⁹⁹ ***. ***. ***.¹⁰⁰

41. Student's *** in late October 2018.¹⁰¹ On November ***, 2018, Parent emailed teacher and notified her parents were in the process of ***. They had *** and found it was causing more agitation and irritability. The Parents wanted to wait until all of Student's *** was completed to finalize the ***.¹⁰²
42. The teacher noticed in November 2018 Student was frustrated more easily and she was not able to get Student to calm down as easily with the cooldown procedures as she was previously.¹⁰³
43. On November ***, 2018, Student was restrained ***, ***.¹⁰⁴ Student was frustrated ***. ***. During Student's escalation, Student's *** teacher attempted to use cooldown techniques, offered Student a break, and called the *** teacher to the room as part of the IEP accommodations. ***.¹⁰⁵
44. Student continued to escalate. ***. During the entire incident, teachers and staff followed Student's IEP by offering breaks, meetings with preferred teachers, offering sensory items and each time Student refused to utilize the technique. ***.¹⁰⁶
45. Once Student was with the counselor, Student worked through why the incident occurred to process Student's emotions. Student was allowed ***, which is one of Student's coping strategies. Student was offered the opportunity to ***, Student refused multiple times. Student did eventually ***.¹⁰⁷
46. Student's *** teacher requested a removal of Student from her class in accordance with Texas Education Code 37.002(b) on December ***, 2018.¹⁰⁸ An agreement was made at the December ***, 2018 ARD meeting to allow Student to stay in her classroom until the end of the semester so Student could adjust to the new plan over winter break.¹⁰⁹ On December ***, 2018, the *** teacher asked again for Student's immediate removal from

⁹⁹ *** 62.

¹⁰⁰ T I at 302-03.

¹⁰¹ RE 17 at 10.

¹⁰² RE 5 at 33.

¹⁰³ T I at 304.

¹⁰⁴ *** 53, 54, 55.

¹⁰⁵ T I at 305, 306.

¹⁰⁶ *** 58.

¹⁰⁷ *** 63.

¹⁰⁸ RE 8 at 84, T I at 133.

¹⁰⁹ T I 26-27.

her classroom.¹¹⁰

47. On December ***, 2018, the School District's Speech Language Pathologist (SLP), LSSP, and *** teacher provided training to teachers and staff on how to meet Student's unique needs. The plan was after the initial training the team would meet again during winter break of 2018 and then weekly.¹¹¹
48. In December 2018, Student began having a hard time completing Student's work. Student would say things like "****" or "****".¹¹²
49. On December ***, 2018, ***. ***. The teacher gave Student space and Student seemed to calm down. ***. ***. ***. ***. Once Student calmed down, ***.¹¹³
50. On December ***, 2018, ***. The *** teacher offered a coping strategy, Student refused and continued to escalate. The *** teacher was called because Student was continuing to bother the other student. Student agreed to take a break with the counselor. Once Student returned to class Student ***. Student was offered a coping strategy, refused, ***. Student was offered another coping strategy and refused. The *** teacher was called. Student escalated and ***. ***. ***. ***.¹¹⁴
51. Student was offered a break with the counselor or time with the principal and Student refused. ***. ***. ***. ***. ***. ***. ***. ***. ***. The teacher offered coping strategies and Student refused. The *** teacher was called. Student was offered a break with the counselor and Student took it.¹¹⁵
52. ***. During the winter break, parents asked the *** to see if it was necessary.¹¹⁶
53. On December ***, 2018, Student had difficulties in various classes. In ***, Student wanted to ***. In reading, Student did not want to do the class activity. In ***. During English, Student ***. In music, Student ***.¹¹⁷
54. On December ***, 2018, Student's parents notified the School District of their intent to enroll Student in private school and seek reimbursement from the School District.¹¹⁸

¹¹⁰ T I 242.

¹¹¹ JE 19 at 31. T II at 664.

¹¹² T I at 309.

¹¹³ *** 70.

¹¹⁴ *** 74.

¹¹⁵ *** 74.

¹¹⁶ RE 17 at 23.

¹¹⁷ *** 75.

¹¹⁸ JE 20 at 1.

55. An ARD committee met on January ***, 2019 and January ***, 2019.¹¹⁹ All previous accommodations in Student's IEP were continued and the following accommodations were added: provide the option to work with or without a group during group work; provide private feedback for grades lower than a 90.¹²⁰ The ARD committee recommended placement in the full self-containment *** (***) classroom.¹²¹
56. The *** program includes general education curriculum, intense social skills instruction, and behavior intervention.¹²² The teachers are highly trained in the areas of behavior management and social skills instruction. The program is ***. The program is typically made up of students with high functioning Autism that function at or above grade level. Staff ratio is *** staff to *** students. The students in the program receive *** on behavior and IEP goals. The general education teacher provides curriculum to the *** teacher and *** students receive *** services.¹²³
57. Students in the *** program learn to identify feelings, respond to peers, and receive push in *** support in the general education setting to promote generalization of skills.¹²⁴ The program offers more one-on-one attention than the general education setting.¹²⁵ Social skills training is imbedded in the instruction throughout the day in ***.¹²⁶ In this program, Student would have access to *** when Student is ready to access it.¹²⁷
58. Student's private LSSP stated Student's current placement in a general education classroom was not working. She recommended an individualized setting allowing Student time to "retrain" and learn how to be a student. She recommended a smaller ratio of Student to teacher, flexibility in learning styles, and less restraints. She stated to the School District the *** program would be a "great" option to give Student's parents. She was concerned with the *** program being a Frisco ISD program because Student may have too many negative feelings about the School District.¹²⁸ Parent feels Student is unable to function in a public school setting.¹²⁹ Parent thought placing Student in the *** program would reinforce Student feeling different and seeing staying in the room without *** as Student

¹¹⁹ JE 22 at 1.

¹²⁰ JE 22 at 6.

¹²¹ JE 22 at 33.

¹²² JE 22 at 31.

¹²³ JE 22 at 31.

¹²⁴ JE 22 at 31.

¹²⁵ T II at 497.

¹²⁶ T II at 694.

¹²⁷ T II at 668.

¹²⁸ T I at 367-70.

¹²⁹ JE 22 at 31.

failing.¹³⁰

59. During the fall semester of the 2018-2019 school year, Student's *** teacher, *** teacher, and staff implemented Student's IEP. During sensory breaks Student was allowed to access many different choices such as ***. Student often would do one sensory break for a short time and then decline any more. Student chose to use Student's ***.¹³¹
60. Parent complimented Student's *** teacher on how well she navigated Student's needs.¹³²
61. Student's *** teacher was in frequent email contact with the parents.¹³³ She would inform the parents of Student's behaviors and frustrations when Student had them and how she handled these behaviors. She would also inform parents of the joy she had educating Student, how "extremely intellectual" and "sweet" Student was. The *** teacher regularly allowed Student to go to the *** teacher's classroom, the *** teachers would be called to the teacher's classroom.¹³⁴ If Student had a bad day, the teacher would call or email parents to inform them of it.¹³⁵ The teacher was aware of Student's triggers and tried to stay ahead of Student to prevent potential problems as possible.¹³⁶
62. Student's *** teacher implemented Student's IEP. She would "cater" to Student. Student would demand her attention and she would go over to Student to de-escalate and reduce Student's frustration.¹³⁷
63. ***. Student was allowed, ***. Student knew Student could take breaks as necessary. ***. If Student became overly frustrated the teacher would call the *** teacher to her classroom for assistance, Student was allowed to take breaks from the classroom, during the breaks, Student was allowed access to sensory items and rewards ***. Student had access to a cool down area in the *** teacher's room, Student was allowed access to preferred adults in times of frustration, Student was given scheduled and unscheduled sensory breaks.¹³⁸
64. The teacher would whisper or pull Student into the hall to discuss behavior positive or negative, Student was given enrichment activities, Student was provided choices for work, the teacher would check for Student's understanding on assignments, if Student was not on

¹³⁰ T I at 154.

¹³¹ *** 37.

¹³² *** 42.

¹³³ RE 5.

¹³⁴ RE 5 (e.g. at 16,), T I at 218.

¹³⁵ T I at 288. RE 5

¹³⁶ T I at 294.

¹³⁷ T I at 220.

¹³⁸ T I 248-80.

- task or did not engage in an activity quickly, the teacher would redirect Student to what Student should be doing, the teacher would go to Student and ask if Student knew the expectations.¹³⁹
65. Student would use co-writer in class on Student's Chromebook, the teacher never penalized Student for poor penmanship, Student was provided graphic organizers to assist Student with Student's writing, Student was allowed to orally inform the teacher of an answer if she could not read Student's writing, Student had access to a Chromebook at all times to type assignments.¹⁴⁰
66. The teacher would alert Student prior to a change in routine, for example, she would email parents to let them know if a substitute would be in class one day. The teacher would notify Student of a transition or change in activity by giving notice a change was happening in a few minutes. The teacher or aides would monitor Student ***.¹⁴¹
67. The teacher knew Student wanted to do well in school and could become frustrated if Student did not understand a concept. ***.¹⁴² ***.¹⁴³ Student had times of being frustrated when Student was able to be redirected and not become upset to the point of yelling ***.¹⁴⁴
68. ***.¹⁴⁵ ***. ***.¹⁴⁶
69. Parent, teacher, the *** teacher, the principal or assistant principal, and the family's advocate met every other week during the school year to brainstorm ways to help Student and adjusting how to work with Student.¹⁴⁷ The teacher and the *** teacher would discuss Student and how to help Student.¹⁴⁸
70. Student was enrolled at *** (***) on January ***, 2019.¹⁴⁹ *** developed modifications and accommodations for Student.¹⁵⁰ *** has *** students below *** grade with 2 full-

¹³⁹ T I 248-80.

¹⁴⁰ T I 248-80.

¹⁴¹ T I 248-80.

¹⁴² RE 4 at 4, T I at 295.

¹⁴³ T I at 270-71.

¹⁴⁴ T I at 297, RE 5 at 27.

¹⁴⁵ T II at 575-76.

¹⁴⁶ T II at 576.

¹⁴⁷ T I at 258, 261.

¹⁴⁸ T I at 266.

¹⁴⁹ RE 16 at 10.

¹⁵⁰ RE 16 at 10.

time teachers and 1 assistant.¹⁵¹ Every Student at *** has some type of learning disability.¹⁵² The school uses the Texas TEKS.¹⁵³ The school has reduced Student's academic rigor until Student expresses through Student's behavior Student is ready to move on.¹⁵⁴

71. At the beginning of Student's time at ***, Student did not attend full days. Student had a one-on-one aide as needed, which was provided by the parents.¹⁵⁵ Student does not attend ***.¹⁵⁶ Student observes *** and discusses a plan with the teacher for how Student may handle *** in the future.¹⁵⁷ During Student's time at ***, Student has ***.¹⁵⁸ Student was ***. Student has been restrained a couple of times to move Student into another room.¹⁵⁹ When Student has behavior issues lasting longer than 30 minutes, parents are called to pick Student up and take Student home.¹⁶⁰
72. Student ***,¹⁶¹ The *** is a registered behavioral therapist (RBT), which was an additional support for Student and an interventionist.¹⁶²
73. Since being at *** Student's self-esteem and attitude has improved.¹⁶³ Student is relearning ***. Student is relearning how to focus on instruction and sustain Student's attention without becoming frustrated or ***.¹⁶⁴

VII. DISCUSSION

A. Statute of Limitations

¹⁵¹ T II at 523.

¹⁵² T II at 501-02.

¹⁵³ T II at 537.

¹⁵⁴ T II at 541-42.

¹⁵⁵ T I at 158.

¹⁵⁶ T II at 527-528.

¹⁵⁷ T II at 528-29.

¹⁵⁸ T II at 532.

¹⁵⁹ T II at 534.

¹⁶⁰ T II at 691.

¹⁶¹ RE 18 at 22, T II at 374, 375.

¹⁶² T II at 374-75.

¹⁶³ T II at 375.

¹⁶⁴ T II at 376.

A parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of FAPE to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. 20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2).

The two year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. 20 U.S.C. §1415 (f) (3) (C); 34 C.F.R. § 300.507 (a) (2). Texas has an explicit statute of limitations rule. In Texas, a parent must file a request for a due process hearing within one year of the date Student or she knew or should have known about the alleged action that serves as the basis for the hearing request. 19 Tex. Admin. Code § 89.1151 (c).

Respondent pled the affirmative defense of Statute of Limitations. Respondent claims February 13, 2018 is the accrual date and any claims prior to that date should be dismissed. Petitioner did not claim any exceptions to the Statute of Limitations. Based on the evidence, the relevant period for this due process hearing was Spring 2018 through the proposed IEP of January 2019. Any evidence or testimony prior to Spring 2018 was for historical purposes only.

At minimum, Parents knew or should have known on December ***, 2018 there was a problem with Student's program because that is the date they notified the School District of their intent to place Student in private school and seek reimbursement. This due process Complaint was filed on February 13, 2019, which is within the one year filing period as defined in Texas. Therefore, no Statute of Limitations issue exists so it does not need to be analyzed.

B. Claims Outside the Hearing Officer's Jurisdiction

The jurisdiction of a special education hearing officer in Texas is strictly limited to claims arising under the IDEA. Specifically, a hearing officer has the authority to determine claims related to the identification, evaluation, or educational placement of a student with a disability or the provision of a FAPE to the student. 34 C.F.R. §§ 300.507; 300.511; 19 Tex. Admin. Code §§ 89.1151(a), 89.1170.

Therefore, to the extent Petitioner raises claims under laws other than the IDEA, those claims shall be dismissed as outside the jurisdiction of the hearing officer, including specifically claims under Section 504 of the Rehabilitation Act of 1974.

C. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C. § 1400(d). The school district has a duty to provide FAPE to all children with disabilities ages 3-21 who are enrolled in the school district. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a) (3).

The school district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

D. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.¹⁶⁵ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case the School District was obligated to provide Student with FAPE during the 2018-2019 school year *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit for the Spring of the 2018-2019 school year. The burden of proof in this case is on Petitioner to show the School District did not do so. *Id.*

¹⁶⁵ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir. 2009).

In addition, Petitioner seeks continued placement at *** at School District expense. The burden of proof is on Petitioner to show the proposed placement of the School District is not appropriate *and* that continued placement at *** is appropriate. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370(1985).

E. FAPE

The Four Factors Test

The Fifth Circuit has articulated a four factor test to determine whether a Texas school district's program meets IDEA requirements. Those factors are:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and
- Positive academic and non-academic benefits are demonstrated. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the

duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P.*, 582 F.3d 576, 583(5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district “was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017).

First, the evidence showed the School District implemented an IEP for Student during the relevant time period that was individualized on the basis of assessment and performance. Student's IEP goals and objectives were developed to address Student's area of need in social skills. The PLAAFPs used as the basis for formulating IEP goals and objectives in this area were derived from private assessments, School District assessments, parent input, and teacher input. The ARD committee reviewed a private neuropsychological evaluation, a School District FIE, an FBA, a private OT evaluation, a School District OT evaluation, and a private speech evaluation during the relevant time period. Student's special education identification was changed to add speech impairment and a BIP was added to Student's IEP based on these evaluations. Student's accommodations were adjusted at various times to add items to improve Student's social skills. The School District's LSSP trained staff on techniques to help teach Student social skills and de-escalate Student.

Student's initial IEP did not include a BIP; however, it included several accommodations aimed at helping Student with Student's behaviors, with de-escalation, and with understanding Student's frustrations. In the Spring of 2018, Student's teachers were collecting data to determine if a BIP was needed. Student's behavior improved after Spring Break in 2018, which coincided with a ***. In August 2018 Parents informed the School District their belief Student was not making progress. In response to the concern, the School District agreed to conduct an FBA for the purpose of developing a BIP if necessary. Teachers collected ABC data and the FBA was completed on October ***, 2018 before the 45 day deadline for completing an evaluation. The School District incorporated the BIP in Student's IEP during the November *** – December ***, 2018 ARD meetings. Almost all of the preventions listed in the BIP were already in Student's

accommodations. The only completely new prevention was to create and implement a preventive plan to remove Student to a safe place prior to escalation. While this was not listed in Student's original accommodations Student's *** teacher attempted to do this as explained by her testimony that she tried to stay ahead of Student's frustrations. If she knew a particular assignment may cause Student stress, she would ***. Student had ***.

2. Implementation

Special education and related services must be provided in conformity with a child's IEP. 20 U.S.C.1401(9); *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct. 988, 994, 197 L.Ed.2d 335 (2017). A school district's lack of implementation denies a child a FAPE if it amounts to a substantial failure to provide the IEP services. *HISD v. Bobby R.*, 200 F.3d 341, 348-349 (5th Cir. 2000). A material failure is one that is more than a minor discrepancy between the services provided and the services required by an IEP. *Van Duyn ex rel. Van Duyn v. Baker School Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). A school district's failure to implement those parts of a child's IEP designed to assist a child with behavioral issues can be a material failure. *See Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003).

Student's IEP was implemented by Student's general education teacher, Student's special education teacher, and the School District staff. The School District implemented each accommodation across settings. Student's *** teacher gave thorough testimony of how she implemented every accommodation. She allowed enrichment opportunities when Student was finished with grade-level work, Student was allowed to move around in the classroom as Student needed, Student had built in sensory breaks during class and access to sensory items while in the classroom and in the ***. Student was consistently told before changes in activities and even if the *** teacher was going to miss school. Student was allowed access to a Chromebook for writing assignments and was not penalized for poor penmanship. Student had ***. ***. When Student was frustrated or Student's behavior began to escalate, Student was offered breaks in an effort to reduce the frustration.

Petitioner argues the School District did not act in a preventive way, but rather a reactive

way. The evidence showed the *** teacher and the staff did try to prevent Student's escalation. The *** teacher would monitor Student's emotions when Student was working on a difficult task. She would *** prevent a rise in Student's frustration level. Student was offered breaks by all teachers and staff who worked with Student in an attempt to prevent Student's escalation. Teachers used *** to allow Student to express when Student was frustrated and attempt to prevent escalation.

3. Least Restrictive Environment

Second, the evidence showed Student was educated in the least restrictive environment. The IDEA requires that a student with a disability shall be educated with non-disabled peers to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment requirement." 34 C.F.R. § 300.114(a)(2)(i)(ii). State regulations require a school district's continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, ***/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.63(c).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.* This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting;
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting; and

- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

Daniel R.R. v. El Paso Ind. Sch. Dist., 874 F. 2d 1036, 1048 (5th Cir. 1989).

Student was in all general education classes with non-disabled peers during Student's *** grade year and the fall of Student's *** grade year. On the continuum of educational settings, general education is the least restrictive and a residential treatment center is the most restrictive.

The proposed IEP of January 2019, placed Student in the *** program. While this setting is more restrictive than the general educational setting, it was necessary for Student due to Student's behaviors. It is not appropriate to educate a student in the general education setting when the student engages in disruptive behavior that significantly impairs the education of the other students in the general education setting. *Daniel R.R.*, 874 F.2d at 1048. Having determined that Student cannot be satisfactorily educated in the general education setting, it must next be determined whether the School District has mainstreamed Student to the maximum extent appropriate. In other words, whether the School District is providing Student with the maximum amount of appropriate interaction with nondisabled students. *Id.* at 1050.

At the end of the Fall Semester of 2018, Student began to have severe outburst and stopped participating in class. Student was a danger to other students because of Student's ***. The School District found it necessary to remove Student from general education and put Student in a setting designed to help Student's social skills and then reintroduce Student to the general education setting when appropriate. The proposed IEP was never implemented due to Student withdrawing from the School District. However, the testimony related to the *** classroom was it offered a *** to *** ratio of teacher to Student and would focus on Student's social skills. The School District's goal in placing Student in the *** program was to help Student learn how to handle Student's emotions when Student was frustrated and teach coping skills in a more controlled environment with the goal of returning to the general education setting. It is unclear from the testimony if Student would interact with nondisabled children during ***. Student was to participate with general education students when Student was capable; with the goal of returning to the general education classroom full time.

This Hearing Officer is not persuaded by Petitioner's argument that Student cannot attend any school in the School District because it would cause Student anxiety. While the Hearing Officer is empathetic to Student being scared after the restraints and not wanting to see certain staff members, the *** program is at a completely different campus with different staff. The proposed IEP was reasonably calculated to meet Student's needs given Student's unique circumstances .

4. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

Third, the evidence showed Student's services were provided in a coordinated, collaborative manner by key stakeholders. Several ARD meetings occurred over Student's time in the School District. At least one parent, if not both, were present at all ARD meetings as well as a general education teacher, a special education teacher, and an administrator. Parents were in regular contact with the School District. Parents emailed teachers and staff as well as had biweekly meetings with teachers and staff. Teachers and staff discussed amongst themselves how to handle Student and brainstormed strategies to address Student's needs. When the parents had any concerns about Student's grades or behaviors, ARDs were held or emails were exchanged with teachers and administration.

5. Academic and Non-Academic Benefits

Fourth, the evidence supports the conclusion Student received both academic and non-academic benefits from the educational program at issue. The IDEA does not require the IEP to guarantee a certain level of accomplishment – only that the IEP is reasonably calculated to meet Student's needs given Student's unique circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. at 999. Furthermore, the school district is not required to provide Student with the best possible education. Student does not need to improve in every academic and non-academic area to receive an educational benefit. The issue is not whether the school district could have done more. Instead, the inquiry is whether Student received an educational benefit. *V.P.*, 582 F. 2d at 590. The evidence showed Student received more than a *de minimus* educational benefit from the program provided given Student's unique circumstances. *Endrew F.*, 137 S. Ct at 999.

Student made all As in Student's classes and was *** at Student's school. Student was successful in academics and was at or above grade level in all of Student's classes.

Appropriate behavioral interventions are an important component of FAPE. A need for special education and related services is not limited to academics, but includes behavioral progress and learning appropriate social skills. *Venus Ind. Sch. Dist. v. Daniel S.*, 36 IDELR 185 (2002). Student's behavior progress began to decline in November and December 2018. This decline in behavior coincided with ***. The School District was planning on addressing this decline in the proposed IEP from January 2019. The BIP the School District developed was not implemented due to Student's withdrawal from the School District. Student did not attend the *** program either. A school district is allowed to change a Student's program without it being a denial of FAPE. Otherwise, the result would be any suggested change in a Student's program would be an automatic admission of denying FAPE to a student.

Student was provided FAPE by the School District. The courts have never specified the four factors must be considered or weighed in any particular way. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 293 (5th Cir. 2009). The whole educational experience, and its adaptation to confer "benefits" on the child, is the ultimate statutory goal. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 397 (5th Cir. 2012).

Student's IEPs for the Spring of the 2017-2018 school year, the Fall of the 2018-2019 school year and the proposed IEP for the Spring of the 2018-2019 school year were reasonably calculated to meet Student's needs and provide an educational benefit.

D. Reimbursement for Private school

Student must meet a two part test in order to secure private placement at school district expense. First, Student must prove that the school district's program was not appropriate. Second, Student must prove that the proposed private placement is appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school. *Burlington Sch.*

Committee v. Dept. of Educ.; 471 U.S. 359, 370 (1985); *Florence Cnty. v. Carter*, 510 U.S.7 (1993).

In this case, I have concluded the School District's program and proposed placement in the *** program were appropriate and provided Student with FAPE in the least restrictive environment. Student made meaningful educational progress and was educated with non-disabled peers to the maximum extent appropriate. 34 C.F.R. §300.114. Therefore, there is no need to consider whether Student met the second prong of the private placement test.

VIII. CONCLUSIONS OF LAW

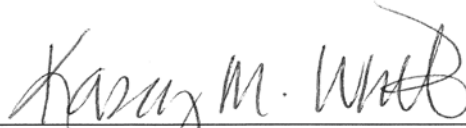
1. Student was provided FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. 176; *Endrew F.*, 137 S. Ct. 988.
2. All of Petitioner's claims arising under any laws other than IDEA are outside the jurisdiction of a special education hearing officer in Texas. 34 C.F.R. §§ 300.503(a); 300.507, 19 Tex. Admin. Code § 89.1151(a).

IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.
2. Petitioner's claims arising under any law other than the Individuals with Disabilities Education Act are **DISMISSED** as outside the jurisdiction of the hearing officer.
3. Petitioner's request for attorneys' fees and litigation costs are **DISMISSED** as outside the jurisdiction of the hearing officer

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

SIGNED August 23, 2019.



Kasey M. White
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. *19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a) (b).*