

DOCKET NO. 222-SE-0319

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

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by Student’s Next Friend, ***, (“Petitioner” or “Student”) brings this action against the Highland Park Independent School District (“Respondent,” or “District”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1400 et seq. (IDEA) and its implementing state and federal regulations.

There are five major issues in this case. First, whether the District failed to timely re-evaluate Student’s special education eligibility as a student with *** (***). Second, whether the District changed the basis for Student’s special education eligibility for Other Health Impairment (OHI) from *** to *** in a timely manner? Third, did the identification of *** as the basis for Student’s OHI identification deny Student a free and appropriate public education (FAPE) because *** required different accommodations? Fourth, whether the District failed to place Student in the least restrictive environment (LRE) by failing to consider a homebound placement. Fifth, did the District procedurally violate the IDEA by insisting Student receive a Functional Behavior Assessment (FBA)?

Having reviewed the evidence and the arguments of counsel, the Hearing Officer concludes Petitioner did not meet Petitioner’s burden of proving a delay in changing Student’s OHI identification adversely impacted Student’s educational programming or denied Student an educational benefit. Furthermore, Petitioner did not prove Student needed additional, or different,

accommodations in order to receive a FAPE, and the District's proposed placement was Student's LRE. However, Petitioner did prove the District failed to timely re-evaluate Student for special education as a student with ***.

II. PROCEDURAL HISTORY

A. Legal Representatives

Student has been represented throughout this litigation by Student's legal counsel, Stephanie Holan of Holan Law. The school district has been represented throughout this litigation by its legal counsel Nona Matthews, assisted by her co-counsel Jennifer Carroll, of Walsh, Gallegos, Trevino, Russo, & Kyle.

B. Resolution Session and Mediation

The parties conducted a timely, but unsuccessful resolution session on April 10, 2019.

III. DUE PROCESS HEARING

The due process hearing was conducted on May 16-17, 2019. Petitioner continued to be represented by Petitioner's legal counsel Stephanie Holan. In addition, Student's Mother also attended the hearing. Respondent continued to be represented by its legal counsel Nona Matthews, and assisted by her co-counsel Jennifer Carrol. In addition, ***, Director of Special Education, Highland Park Independent School District attended the hearing as the District's party representative. The hearing was recorded and transcribed by a certified court reporter.

At the conclusion of the hearing the parties requested the record remain open in order to allow submission of written closing arguments on the seminal issues in this case. Those pleadings were submitted by both parties in a timely manner. The parties agreed to extend the deadline for the Hearing Officer's decision to allow the Hearing Officer time to complete a review of the extensive record on file in this case, conduct legal research, and to consider the written closing

arguments in preparing the decision. The Decision in this case was extended, by agreement to July 8, 2019 (Order No. 6).

IV. ISSUES

A. Petitioner's Issues

Petitioner submitted the following overall, broad issue: Whether the District failed to correctly identify Student's *** disorder and devise an appropriate Individualized Education Plan (IEP) that was reasonably calculated to address Student's disability and provide a FAPE under the IDEA within the one year statute of limitations period that applies in Texas; and specifically:

EVALUATION

1. Whether Student should be continued to be identified as a student with ***?
2. Did the District fail to timely re-evaluate Student for ***?

IDENTIFICATION

1. Whether the District failed change the basis of Student's OHI eligibility *** to *** in a timely manner?
 - a. Failing to update the diagnosis for Student's OHI eligibility from the *** disorder of *** to the *** disorder of ***;
 - b. Failing to correctly identify the basis of Student's *** (***) based upon *** when the *** disorder is the result of Student's ***;
2. Whether the District incorrectly identified Student as a student with *** (***) based upon *** when the *** disorder is the result of Student's ***?

FAPE

Whether Student was denied a FAPE during the relevant time period by failing to devise and implement appropriate individual education plans (IEPs) designed to meet Student's educational needs because:

- a. Student's *** disorder of *** requires different accommodations than those needed to address *** or other *** disorders;

- b. The District failed to consider the recommendations of private doctors; and,
- c. The District inappropriately insisted on implementing a Behavior Intervention Plan (BIP).

PLACEMENT

Failed to provide an appropriate placement because the District:

- a. Continued to attempt to maintain Student's general education placement;
- b. Continued to provide Student with *** (***) and,
- c. Failed to timely consider homebound services for Student.

PROCEDURAL VIOLATION

1. Did the District procedurally violate the IDEA by insisting Student receive a Functional Behavior Assessment (FBA)?
2. Did the alleged procedural violation cause an educational harm to Student?

B. Respondent's Legal Position

The District filed a timely detailed denial in response to the Complaint that provided substantive responses to the issues / violations alleged in the Complaint and moved for a dismissal of all alleged violations and requests for relief arising outside of the one-year statute of limitations as applied in Texas, and moved for dismissal, as a question of law, of all non-jurisdictional claims and requests for relief.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following relief:

- (1) Remove Student's identification as a student with *** for purposes of special education;

- (2) Add an accommodation to Student's IEP that Student receive homebound instruction on days Student cannot attend school;
- (3) Omit a BIP form from Student's IEP;
- (4) Cease all District psychological testing;
- (5) Cease having Student "followed by teachers" as a method of providing in-class support.
- (6) Implement all of the recommendations from Student's private physicians;
- (7) Implement appropriate accommodations recommended by Student's medical professionals;
- (8) Discipline District Administration.
- (9) Require the ARD Committee to be staffed by members chosen by Petitioner; and,
- (10) Public reprimand for District Administration.

Petitioner's requested relief (8) through (10) were dismissed in Order No. 2 issued April 11, 2019 for a lack of jurisdiction.

B. Respondent's Requested Relief

Respondent requests the hearing officer deny the relief requested by Petitioner.

VI. FINDINGS OF FACT

1. Petitioner enrolled in Highland Park ISD as *** student in August of 2011 and continued enrollment in the District through the current 2018-2019 school year.¹
2. The District completed Petitioner's most recent initial Full and Individual Evaluation (FIE) on February ***, 2017, when Petitioner was *** years old and in the *** grade.²
3. During Student's initial February 2017 FIE the evaluator conducted a record review, collected information from Student's parent, interviewed six teachers, conducted

¹ Joint Exhibit (JE)-37.

² JE-1; JE-37.

- classroom observations, and administered a battery of assessments that used a variety of clinically valid assessment tools including: ***. Based on the information collected, parental and teacher input, and the assessment results, the evaluator concluded Student met criteria as a student with *** because Student demonstrated, ***.³
4. On March ***, 2017, Petitioner's medical doctor diagnosed Petitioner's primary medical condition as ***, which would likely progress to *** as Student ages.⁴
 5. On March ***, 2017, the Admission, Review, and Dismissal (ARD) Committee reviewed the FIE and determined Petitioner met eligibility for special education services as a student with an Other Health Impairment (OHI) (***) disorder; Unspecified Anxiety Disorder) and *** (***) (***)⁵.
 6. On February ***, 2018, when Petitioner was in the *** grade, the District convened Petitioner's annual ARD committee meeting.⁶
 7. On August ***, 2018, Petitioner's ARD Committee convened to review and revise Petitioner's IEP based on information and recommendations from Petitioner's *** physician. The ARD committee revised the set of existing accommodations to address needs related to Petitioner's *** disorder: access to drinks and snacks to help with alertness, allow movement breaks within the classroom, and ***.⁷
 8. During the August ***, 2018 ARD Committee meeting Student's parent shared information about *** and its impact in the educational setting. ***, ***, ***.⁸
 9. Rather than add extra time for testing, the August ***, 2018 ARD Committee added an accommodation to allow tests and quizzes in an alternate environment. Petitioner's IEP already provided for *** opportunities, and Petitioner's schedule allowed for a light first period load. Instead of shortening Student's school day, the ARD Committee decided to move Petitioner's *** (***) class to *** and added a *** class because this option allowed Petitioner to be at school when possible, but also allowed Student to *** if needed.⁹
 10. The August ***, 2018 ARD Committee considered homebound instruction and conducting a functional behavior assessment (FBA), but decided to reconsider both options after Petitioner had four to six weeks to acclimate to the new school year and to obtain a Homebound Needs Evaluation from Petitioner's medical doctor. The ARD Committee,

³ JE-1.

⁴ JE-2; JE-37.

⁵ JE-1; JE-37.

⁶ JE-3; JE-37.

⁷ JE-10 at 1-2; JE-37

⁸ JE-10 at 24-26.

⁹ JE-10 at 1-2, JE-37.

including Petitioner's parent, reached consensus.¹⁰

11. Various accommodations were discussed and negotiated during the September ***, 2018 ARD Committee meeting. The District proposed a partial day schedule from 12:00 until 3:15. The goal and expectation was to require Student to stay at school until the end of the day. To implement this accommodation the District further proposed a gradual or phased schedule implementation. The gradual implementation would have Student begin by attending Student's *** (***) and periodically increase the amount of time Student was required to be in school by adding ***:
 - *** (***) for one-week (September 24-28, 2018);
 - *** and *** (***) for one-week (October 1-5, 2018);
 - ***, ***, and *** (***) for one week (October 9-12, 2018); and,
 - ***, ***, *** and *** for two weeks (October 15-26, 2018).¹¹
12. On September ***, 2018, Student's parent sent the District a letter demanding the District revise the basis of the *** disorder on Student's OHI eligibility form as *** and add a list of accommodations to Student's IEP.¹²
13. On September ***, 2018, the District responded to Petitioner's demand by stating the OHI eligibility form had already been provided to doctor and the requested revision to Petitioner's accommodations would be considered by the ARD Committee when the OHI form was received from the doctor.¹³
14. The District's September ***, 2018 response also explained how the IEP already addressed seven of the eleven requested accommodations and reassured Petitioner's parent that, on September ***, 2018, the ARD committee would consider the remaining four requested accommodations of opportunity to stand, opportunity for ***, access to recorded lectures, and extended time.¹⁴
15. On September ***, 2018, Student's *** doctor completed a Homebound Needs Evaluation and recommended a "modified schedule starting at 10:00 a.m. or an alternate start time. If this can't be accommodated easily on campus, then a homebound option might be considered."

¹⁰ JE-10 at 1-2; JE-37.

¹¹ JE-16 at 3-4.

¹² JE-12; JE-37.

¹³ JE-13; JE-37.

¹⁴ JE-13; JE-37.

16. On September ***, 2018,¹⁵ Petitioner's ARD Committee convened to review and revise Petitioner's IEP based on Petitioner's progress, requested revisions from Petitioner's parent, and information from Student's *** doctor. During the discussion about Petitioner's progress, District staff reported *** a.m. as Petitioner's average arrival time, and that during the first 17 days of school for the 2018-2019 school year, Petitioner was absent *** days and left early *** days.¹⁶
17. The September ***, 2018 ARD Committee agreed to remove *** opportunities from the IEP because Petitioner's behavioral issues increased rather than decreased with this strategy. Teachers also reported the following behaviors: leaving class without requesting a break or not telling teachers where Student was going and generally not being in Student's assigned class. The District proposed conducting a FBA, counseling assessment, and an in-home and parent training needs assessment.¹⁷
18. In addition to increased behavioral issues after ***, the *** accommodation was discontinued because Student was *** which interfered with Student's *** ***.¹⁸
19. During the September ***, 2018 ARD Committee meeting, the ARD Committee added three of the four accommodations requested by Petitioner's parent not already included in the IEP, specifically: opportunity to stand, opportunity for ***, and extended time. The ARD Committee did not add recorded lectures due to concerns about Petitioner's parent having access to confidential information about other students. However, the ARD Committee revised an accommodation related to assignment notebooks and class notes, as well as added the following additional accommodations: a tiered break system, indicate on class notes where student left off, email to parent a summary of the lesson and applicable resources, provide a completed review, identify a safe person, in the moment reminders of social skills expectations/strategies, priming before changes in schedule/personnel, and behavior contract/point sheet.¹⁹
20. During the September ***, 2018, ARD Committee meeting, the ARD Committee also considered recommendations of Student's *** doctor as stated in the September ***, 2018, Homebound Needs Evaluation, specifically, a modified schedule that included a later start time (partial day) and homebound, if partial day is not possible. Based on Petitioner's pattern of attendance, the ARD Committee decided that the partial day option was the LRE to address Petitioner's needs.²⁰

¹⁵ The September ***, 2018, ARD Committee meeting recessed and concluded on September ***, 2018. For simplicity, this ARD Committee meeting will be referred to in this document as the September ***, 2019 ARD Committee meeting.

¹⁶ JE-16; JE-37.

¹⁷ JE-16 at 3-6; JE-37.

¹⁸ Transcript (Tr.) at 398, 531-32.

¹⁹ *Id.*

²⁰ JE-16 at 3-6; JE-37.

21. To address Petitioner's issue with leaving early and not staying until the end of the school day, triggered by Petitioner calling Student's mother to pick Student up, the September ***, 2018 ARD Committee agreed to a scaffolded partial day in which Petitioner would attend the *** (***) and *** (***) Based on the change in schedule, the ARD Committee revised some goals and discontinued others until Petitioner's attendance and length of school day increased.²¹
22. On October ***, 2018, Student's private therapist sent the District a letter that included the following recommendations for the ARD Committee to consider: (1) Teachers should make effort to spend individual time with Student to build rapport outside of peer/social setting; (2) Contribution or job in classroom to build sense of self-esteem and make connection to classroom community; (3) Simple statements like "glad to see you" go a long way; (4) Reflecting Student's emotions when Student does not reciprocate ("seems like you're having a hard day"); and (5) Give benefit of doubt and consider misbehavior as Petitioner "having a hard time" rather than "giving you a hard time."²²
23. On October ***, 2018, Student's *** sent the District a letter recommending staff attempt to gain trust through conversation and relating experiences.²³
24. On October ***, 2018, the District completed an Addendum to the FIE to update the diagnosis on the OHI eligibility form from the *** disorder of *** to the *** disorder of ***.²⁴
25. The District did not conduct an evaluation prior to changing the basis for Student's OHI eligibility. The change was based upon data collected during the 2017 FIE and from information provided by Student's *** doctor.²⁵
26. On October ***, 2018, Student's ARD Committee convened to review and revise Student's IEP based on Petitioner's progress and information from private service providers. The ARD Committee reviewed the October ***, 2018, Addendum to the FIE. Petitioner's parent withdrew consent for the FBA, a parent training assessment, in-home training assessment, and a special education counseling assessment.²⁶ The ARD Committee discussed, but did not decide, whether Petitioner would participate in *** ***, and whether that participation would be used as a reward or a scheduled event.²⁷ Petitioner's parent stated that District staff needed to repair the relationship with Petitioner. District staff

²¹ *Id.*

²² JE-19; JE-37.

²³ JE-21; JE-37.

²⁴ JE-20; JE-37.

²⁵ JE-20.

²⁶ JE-22; JE-24 at 3; JE-37.

²⁷ This recommendation is addressed again in the ARD committee meeting that began on February ***, 2019.

replied that relationship building is difficult when a student is not at school. The ARD Committee agreed to utilize *** time for relationship building with teachers, including incorporating strategies recommended by Student's private therapist.²⁸

27. During the October ***, 2018, ARD Committee meeting the District proposed removing the accommodation regarding sending an e-mail to Petitioner's parent with a daily summary of class because teacher notes in Google calendar have the same information, and emailing the information directly to the parent had not increased Petitioner's work completion. The ARD Committee considered placement options and decided to stop increasing the number of classes being added (i.e. continue with ***, ***, and *** only) on the scaffolded partial day because Petitioner had not adjusted well to the increased length of school day and work demands. The ARD Committee also discussed homebound instruction and agreed to obtain additional information. The ARD Committee did not reach consensus. Parent disagreed with the proposal to discontinue daily email summaries²⁹
28. On November ***, 2018, Student's ARD Committee reconvened after the October ***, 2018 ARD Committee meeting. Prior to the meeting, the District sent proposed revisions of the IEP to Petitioner's parent. Between October ***, 2018, and November ***, 2018, Petitioner attended *** (i.e. *** per day for *** days).³⁰
29. The District used behavior data gathered for the proposed FBA prior to the parent withdrawing consent to develop a Behavior Intervention Plan ("BIP"). The proposed BIP included strategies such as: "[Student] responds well when [Student] has built a positive, trusting relationship with adults; Show an interest in [Student] and [Student's] interests; Utilize supportive strategies - empathetic, nonjudgmental, calming; and re-establish communication in a positive, caring way." The ARD Committee removed the assignment notebook accommodation because the ARD Committee decided Petitioner would not be required to maintain an assignment notebook at that time; revised accommodations related to copy of class notes, reduction of assignments, and point sheet/monitor sheet to clarify and adjust based on Petitioner's needs; and added the accommodations of *** in an alternate location and implement the BIP.³¹
30. On November ***, 2018, the District proposed new IEP goals to address behavior. The District proposed a partial day (***, ***, and ***) and intermittent homebound because the partial day without intermittent homebound did not meet Petitioner's needs.³² Petitioner's parent did not submit any additional requests for revisions to the IEP. The ARD Committee did not reach consensus. Petitioner disagreed with the District's proposed intermittent homebound placement. However, Petitioner's parent waived the five-school

²⁸ JE-24 at 2-3; JE -37.

²⁹ *Id.*

³⁰ JE-24; JE-37.

³¹ JE-24 at 2-12; JE-37.

³² JE-24 at 8-12; JE-37.

day waiting period prior to implementation so typical homebound services could begin the week of November ***, 2018.³³

31. On November ***, 2018, the District proposed, via an IEP amendment, to decrease the number of days Petitioner would need to be absent before triggering homebound services from four consecutive days to two consecutive days. Petitioner's parent never signed the proposed IEP amendment.³⁴
32. On February ***, 2019, Student's ARD Committee convened for Student's annual ARD Committee meeting, but recessed because Petitioner's parent asked the District to reschedule the meeting.³⁵
33. On March ***, 2019, Student's ARD Committee convened for Student's annual ARD Committee meeting. After reviewing progress on IEP goals and present levels, the District proposed new IEP goals, revised accommodations and plans for statewide testing. In addition to revising many of the existing accommodations, the District proposed adding the following accommodations: allowing the use of a word processor, opportunity for Petitioner to dictate answers, oral administration of tests, use of a four-function calculator, and preview/discuss upcoming assignments/tests. Petitioner's parent did not request any revisions to goals, accommodations, or statewide testing. The ARD Committee reviewed and revised the LRE section of the IEP based on feedback from the ARD Committee, including Student's parent. After discussing options for supports and services, the ARD Committee agreed to recess the meeting to gather additional information from Petitioner's private provider, and from Petitioner, and agreed to continue the annual ARD Committee meeting on April ***, 2019.³⁶
34. While this litigation was pending, on April ***, 2019 the ARD Committee re-convened to complete Student's annual ARD Committee meeting. Student's parent refused to participate at the mutually agreed upon date and time and refused to propose an alternative date and time; therefore, the District proceeded without Petitioner's parent. The District did not have any additional information from Petitioner or outside providers to consider. Petitioner's parent asked the homebound teacher to stop seeking input from Petitioner in the development of the IEP and instructed outside providers to discontinue sharing information with the District. However, the ARD Committee did consider the relief requested in Petitioner's Complaint related to the identification, evaluation, placement, or the provision of a FAPE to Petitioner. Rather than remove *** eligibility without evaluation data to support such a decision, the District proposed conducting a re-evaluation within thirty school days of consent from Petitioner's parent.³⁷

³³ *Id.*

³⁴ JE-25; JE-37.

³⁵ JE-29 at 26; JE-37.

³⁶ *Id.*

³⁷ JE-29 at 32; JE-37.

35. During the April ***, 2019 ARD Committee meeting the District proposed revising Student's IEP goals, as well as revising Student's BIP to add an additional strategy recommended by Student's therapist that was discussed in a previous ARD Committee meeting, but inadvertently left out of the BIP, specifically providing opportunities to have jobs and make contributions to the classroom. In addition, the District proposed revising three strategies to assist Student's parent in identifying how recommendations from the therapist have been incorporated into the IEP. The ARD Committee declined to remove *** ("****") as a support for Petitioner when on-campus for Student's partial day; however, along with other revisions, the District proposed training for staff providing *** to Petitioner on relationship building and implementation of the IEP.³⁸
36. On April ***, 2019, Student's parent notified the District of her disagreement with the decisions of the ARD Committee and requested the ARD Committee reconvene after April ***, 2019. On April ***, 2019, the District sent Student's parent an e-mail with a Notice of ARD Committee meeting for April ***, 2019. Student's parent did not respond to any of the District's communications related to scheduling the ARD Committee meeting.³⁹
37. On April ***, 2019, the District convened the ARD Committee meeting requested by Student's parent. Student's parent did not attend the ARD Committee meeting or request that it be rescheduled for a different date or time. The District proposed conducting a re-evaluation within thirty school days of consent from Petitioner's parent. The District proposed Extended School Year (ESY) services in the form of one hour per day of homebound instruction for two four-day weeks in June and two four-day weeks in July (total of 16 hours). The District proposed ESY to help Petitioner maintain a routine/structure, as well as helping to maintain relationships. The first priority during ESY was to complete any incomplete coursework for the 2018-2019 school year. Any remaining time would be spent pre-teaching *** (***) and *** skills for the 2019-2020 school year.⁴⁰
38. On April ***, 2019, the District proposed providing Student an opportunity to meet new teachers prior to the first day of school to assist with establishing relationships for the 2019-2020 school year. The District proposed the following changes to homebound services: (1) one hour of homebound instruction for each consecutive day absent in an effort to keep Petitioner working on curriculum a week or less behind instruction in the general education classroom and to facilitate the transition from homebound services to school-based services when Student is able to attend for Student's partial school day services; (2) Allow flexible scheduling, which will take into account Student's alertness on any particular day because data supports that Student's ability to work for sustained periods fluctuates from day to

³⁸ JE-37.

³⁹ JE-29 at 144-46; JE-37.

⁴⁰ JE-29 at 36, 150-52

day; and (3) Allow two-weeks for completion of assignments and/or exams at the end of the grading period because Student is over a week behind in Student's coursework.⁴¹

39. Student's grades reflect educational progress.⁴²

VII. DISCUSSION

A. Identification

The threshold issue in this case is whether the District has a reason to suspect *** was the basis of Student's OHI prior to October 2018? The ARD Committee meeting on February ***, 2018 included a review of the OHI form indicating *** reported in the February 2017 FIE. Student was identified for special education as a student with an OHI and *** during this ARD Committee meeting. On October ***, 2018 the ARD Committee added an addendum to Student's IEP that changed the basis of Student's OHI eligibility from *** to ***. Petitioner argues the basis for Student's OHI should have been changed at an ARD Committee meeting conducted on September ***, 2018. In this case an ARD Committee adopted the addendum after receiving the physician completed OHI paperwork on October ***, 2018 – 27 days from the date the Committee agreed to change Student's OHI eligibility. Under state rules an ARD Committee must convene to determine the student's eligibility for special education within 30 calendar days from the date the FIE report is completed. 19 Tex. Admin. Code § 89.1050(d).

1. Reasons to Suspect *** as the Basis of Student's OHI.

Specific evidence that the District had reason to suspect *** prior to October ***, 2018 includes information submitted by Student's physician on a prescription pad, dated March ***, 2017 informing the District of Student's *** and stating the condition will eventually advance to ***, letter from ***, ***, dated May ***, 2018, and stating Student suffers from ***** which is associated with ***. The treating *** Specialist recommended specific accommodations

⁴¹ JE-29; JE-37.

⁴² JE-32.

including late arrival, scheduled ***, ***, and extra time for testing. ***, ***, sent the District another letter on August ***, 2018 recommending a late arrival at ***. On September ***, 2018 the District received a homebound evaluation from *** reiterating the *** diagnosis.

2. Was *** Identified within a Reasonable Time Period?

Student's FIE was amended on October ***, 2018 to change the basis of Student's OHI eligibility from *** to ***. The District knew Student's diagnosis changed after it received the May ***, 2018, *** *** diagnosis. The new diagnosis should have been specifically noted as the basis for Student's OHI sooner. Whether the delay in changing Student's OHI special education eligibility from *** to *** was reasonable is a procedural issue. *D.O. v. Escondido Union School District*, 73 IDELR 180 at *12, 3:17-cv-2400-BEN-MDD, (S.D. Cal. Dec. 17, 2018) (finding a four month evaluation delay was a procedural violation and the delay was unreasonable under the circumstances and denied the student an educational benefit). The District's delay in changing the basis of Student's OHI identification was not a denial of FAPE for the reasons stated below.

The IDEA and its implementing regulations impose a legal requirement that a hearing officer's determination of whether a child received FAPE must be based on substantive grounds. 20 U.S.C. § 1415(f)(3)(A)(i); 34 C.F.R. § 500.513(a)(1). A hearing officer may find a denial of FAPE for a procedural violation only if he or she finds the procedural inadequacies:

- (1) Impeded the child's right to a FAPE;
- (2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (3) Caused a deprivation of educational benefit.

Dallas Indep. Sch. Dist. v. Woody, 178 F. Supp. 3d 443, 462 (N.D. Tex. 2016), *aff'd in part, rev'd in part*, 865 F.3d 303 (5th Cir. 2017) ("Procedural inadequacies that result in the loss of educational opportunity ... clearly result in the denial of FAPE."), citing *Doug C. v. Hawaii Department of Education*, 720 F.3d 1038, 1043 (9th Cir.2013) (internal quotations omitted); 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 500.513(a)(2).

Student failed to meet Student's burden of proving additional/different accommodations were required. The undisputed evidence demonstrated Student's IEP was revised on April ***, 2018 to include a *** Plan that states "allows ***." The *** Plan does not specify when, where, or for how long Student was to "****."

During the two day ARD Committee meeting that convened on September ***, 2018, Petitioner requested the *** be deleted as accommodations because they were not working. Specifically, Student was ***.

The District proposed a partial day schedule from 12:00 until 3:15 during the September ***, 2018 ARD Committee meeting. This proposed schedule was designed to accommodate Student's *** and the ARD Committee set the week of October ***, 2018 to reconvene to review the effectiveness of the proposed schedule. The September ***, 2018, ARD Committee added additional *** disorder accommodations to Student's IEP:

- Opportunity to leave class for individualized assistance;
- Access to drinks and snacks to help with alertness;
- Access to the *** classroom;
- Allowed to stand instead of sitting at seat during the class;
- *** (***); and,
- Use of a *** during class.

An IEP must offer instruction "specially designed" to meet a child's "unique needs" and be constructed after careful consideration of the child's present levels of achievement, disability, and potential for growth. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 (2017). (2017) (citing 20 U.S.C. § 1414(d)(1)(A)(i)(I) through 20 U.S.C. § 1414 (d)(1)(A)(i)(IV)).

The District knew Student's diagnosis changed when it received the *** diagnosis of *** on May ***, 2018. *** sent a second letter on August ***, 2018 reiterating the new diagnosis. On August ***, 2018 Student's annual ARD Committee convened and Student's parent made a lengthy and detailed substantive presentation to the Committee on ***. Parent was provided OHI

paperwork for completion by a physician during the August *** ARD Committee meeting. 19 Tex. Admin. Code § 89.1040(c)(8).

On September ***, 2018, Petitioner sent the District a letter demanding the OHI eligibility be changed from *** to ***. The District responded on September ***, 2018 noting Student's parent requested the August *** ARD Committee consider the *** August ***, 2018 letter diagnosing ***. The District emphasized the ARD Committee adopted 7 of the 13 accommodations requested in Petitioner's September *** letter. Moreover, 4 of the 13 accommodations requested by Petitioner, and the need for homebound instruction, were scheduled for consideration by the September ***, 2018 ARD Committee.

The ARD Committee met again on September *** and ***, 2018 and proposed an addendum to Student's FIE to change Student's OHI eligibility from *** to ***. The change required input from Student's physician and was effective October ***, 2018. The FIE and Student's OHI eligibility were changed within 5 weeks of the District receiving Petitioner's September ***, 2018 demand letter. Under the circumstances, the processing time was not unreasonable. Having reviewed the record, the Hearing Officer concludes the re-identification of Student's *** disorder was not untimely and the accommodations were reasonably calculated to mitigate Student's *** and afford Student an opportunity to make educational progress. Other than requesting the *** be removed as an accommodation, Petitioner presented no evidence of additional/different classroom accommodations were needed to provide Student a FAPE.

B. FAPE

The second issue is whether Student required additional/different accommodations to receive a FAPE when the basis of Student's OHI eligibility changed from *** to ***. The District had reason to suspect Student's *** disorder was progressing and becoming more challenging prior to October 2018. However, Student did not meet Student's burden of proving additional/different accommodations were needed to provide Student a FAPE.

1. 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 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). Under IDEA the Highland Park Independent School District has a duty to provide a free appropriate public education to all children with disabilities residing within its jurisdictional boundaries between the ages of 3 and 21. 34 C.F.R. § 300.101(a). The evidence showed Student was a child with a disability residing within its jurisdiction and thus the school district had the duty to serve Student under IDEA.

A FAPE is special education related services, and special designed personalized instruction with sufficient support services to meet the unique needs of the child in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

2. IEP

In meeting the obligation to provide a FAPE the District must have in effect an Individual Education Program (IEP) for each child with a disability 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, a child's IEP also includes a description of the related services, supplementary support and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, and, 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).

Either a parent of a child or a school district may initiate a request for an evaluation to determine if the child is a child with a disability. 34 C.F.R. § 300.301(b). The parent must provide consent for the evaluation. 34 C.F.R. § 300.300. The parent provided written consent for the FIE addendum on September ***, 2018, during the re-convened ARD Committee meeting. Essentially

all of the accommodations requested by Student were in place or under consideration during the month it took to complete the addendum.

The circumstances of this case led the Hearing Officer to conclude the delay in changing the basis of Student's OHI eligibility was not unreasonable, did not impede Student's right to a FAPE, in no way impeded parental participation in the decision making process, and did not cause a loss of an educational benefit.

Whether Student's OHI was identified as *** or *** appears to be a distinction without a difference. Regardless of the OHI label, Student unquestionably suffers from a *** disorder. The District has timely responded to Petitioner's concerns and provided robust accommodations intended to mitigate Student's *** disorder while simultaneously trying to keep Student school.

3. Accommodations

Student claims Student was denied a FAPE because the failure to timely change Student's OHI eligibility resulted in a defective IEP that was "vastly inadequate" because *** requires different accommodations for educational progress. Petitioner demanded 13 specific accommodations (two of which were recommended by ***). The District quickly implemented 7 of the 13 requested accommodations and stated a willingness to consider 4 additional accommodations requested by Petitioner during the September ***, 2018 ARD Committee meeting. Additionally, the District proposed a partial day schedule that initially started Student's school day with the last period and phased in additional classes over time. If fully implemented, the proposed partial day schedule would have Student in school from 12:00 until 3:15. Student failed to meet Student's burden of proving additional or different accommodations were required to mitigate Student's *** disorder.

4. Behavior Intervention Plan

A BIP can be a component of a student's IEP that describes positive behavioral interventions and other strategies that must be implemented to prevent and manage a student's inappropriate or unacceptable behavior. In most cases, a BIP outlines the targeted behaviors, the behaviors that are expected, positive interventions, strategies and supports to address the behaviors, and the positive and negative consequences for identified behaviors. The U.S. Department of Education expressly rejected the notion that school districts should be required to develop a BIP for all students with ***. Instead, a student's need for behavioral interventions and supports must be decided on an individual basis by the student's ARD Committee. 71 Fed. Reg. 46,683 (2006).

The ARD Committee should consider the behavioral needs of Student in the development, review, and revision of Student's IEP when necessary to provide FAPE. The ARD Committee must consider and include appropriate behavioral goals and objectives and other appropriate services and supports in the IEPs of children whose behavior impedes their own learning or the learning of their peers. 19 Tex. Admin. Code § 89.1055(g); *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. RE-1*, 71 IDELR 68 (EDU 2017).

Student's behavioral challenges have been consistently documented since Student's initial February 2017 FIE. Again, regardless of the cause, those behavioral issues have impeded Student's educational progress. After Student's parent withdrew consent for the FBA, the District devised a BIP based upon data gathered since the start of the 2018-2019 school year. The BIP identified numerous antecedent strategies and interventions. The BIP included teaching strategies aimed at addressing Student's needs to establish and maintain relationships with staff and peers. Behavior management strategies were also included. Numerous behavioral interventions labelled "Supportive Strategies – Empathetic, Non-judgmental, and Calming" were also listed in the BIP along with therapeutic support strategies.

Based upon Student's PLAAF's the BIP identified 3 targeted behaviors: non-compliance and refusal, unexpected verbal comments and aggression, and escape from undesired tasks when anxious or tired. The BIP developed appropriate IEP goals to address the targeted behaviors.

The Hearing Officer is unpersuaded by Petitioner's argument that Student's behavioral challenges are merely secondary to Student's *** thus negating the need for behavioral interventions. The preponderance of the evidence demonstrates Student needs empathetic and meaningful individualized behavior support to make educational progress. In this case, a BIP is not only appropriate, but it is also necessary for Student to receive a FAPE and make educational progress. *R.C. ex rel. S.K., D.H. v. Keller Indep. Sch. Dist.*, 958 F. Supp. 2d 718, 732–33 (N.D. Tex. 2013) (“The IDEA requires a child’s IEP team to ‘consider the use of positive behavioral interventions and supports, and other strategies, to address [the] behavior’ of a ‘child whose behavior impedes the child’s learning or that of others....’”); citing *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir.2012); 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. §§ 300.304(b); 300.324(a)(2)(i).

5. The Four Factors Test

In Texas the Fifth Circuit has articulated a four factor test to determine whether a 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. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F.3d 286, 294 (5th Cir. 2009). Application of the four factors to the evidence in this case supports the conclusion that the school district's program was appropriate and provided Student a FAPE.

First, the school district's program is individualized on the basis of the student's assessment and performance. The District's efforts to accommodate Student's *** disorder were undoubtedly individualized. The accommodations were based upon input from Student's private providers and information conveyed by Student's parent. The partial-day schedule and the eventual schedule for homebound services were tailored to Student's unique needs and were designed to keep Student placed in general education to the maximum extent appropriate. *Andrew F.*, 137 S. Ct. at 1000.

Second, the school district's program was delivered in the LRE. The evidence demonstrates the District continually attempted to maintain a placement that would keep Student mainstreamed while accommodating Student's ***. *Daniel R.R.*, 874 F.2d at 1044-45.

Third, the services were provided in a coordinated, collaborative manner. The credible evidence shows Student parent was an active participant in ARD Committee meetings. Parent's concerns were consistently considered and addressed. The record demonstrates the District heard Petitioner's concerns and objections, considered materials Student's parent submitted, and convened ARD Committee meetings to address parental concerns and explain the District's reasoning. *J.P. v. City of New York Department of Education*, 717 Fed. Appx. 30 (2nd Cir. Dec. 19, 2017).

Fourth, Student's grades establish Student did derive an educational benefit from Student's IEP. *Andrew F.*, 137 S. Ct. at 1000; *Board of Educ. of Hendrick Hudson Central School Dist., Westchester County v. Rowley*, 458 U.S. 176, 188-89 (1982); *see also Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 (5th Cir. 2009).

For these reasons this Hearing Officer concludes the District's program was reasonably calculated to provide Student with the requisite educational benefits and was therefore appropriate. *Andrew F.*, 137 S. Ct. at 1000.

C. Evaluation

1. ***

Student's Complaint asserts the District should not have identified Student as a student with *** because Student's behavior issues are secondary to Student's ***. Student argues *** is a complex disorder. The evidence showed ***.

One criterion for identifying a student with *** requires the student exhibit, ***, ***.

The thrust of the February 2017 FIE was behavior. The evaluation thoroughly addressed Student's ***. The evaluator conducted a records review, obtained information from Student's parent, obtained teacher input and information, interviewed teachers, conducted numerous classroom observations, and administered an array of valid test instruments. The evaluator concluded Student met criteria as a student with *** because Student demonstrated, ***. The evaluator specifically noted:

“Results of rating scales, classroom observations, and interviews suggest [Student] struggles to ***. Both teacher and parent indicated concerns with [Student's] social skills and with [Student's] ability to make and keep friends. Teachers indicated that [Student] is at times *** to other children, is *** towards peers, and often prefers to work alone. The data also suggests that [Student] has not *** with [Student's] teachers, school staff, or other adults in [Student's] life.”

Petitioner argues Student's identification as a student with *** is erroneous. The IDEA imposes an evaluation process for identifying (or removing) a special education disability. That process includes making an initial determination that the student's educational or related service needs, including improved academic and functional performance, warrant re-evaluation, or a re-evaluation is requested by the parent or a teacher. 34 C.F.R. § 300.303(a)(1). Specific evaluation procedures must be used. 34 C.F.R. § 300.304. For re-evaluations those procedures include conducting a review of existing data, obtaining parental input, review of classroom assessments and classroom observations, gathering teacher and service provider observations, making a

determination that the student continues to need special education and related services, and whether modifications to the student's educational programming are needed to enable the student to meet measurable annual IEP goals and participate, as appropriate, in a general education setting. 34 C.F.R. § 300.305. Finally, the ARD Committee is required to make a determination concerning the student's disability eligibility and provide a copy of the evaluation and report to the student's parent. 34 C.F.R. § 300.306.

Petitioner voiced disagreement with Student's *** identification during the August ***, 2018 ARD Committee meeting. Petitioner requested a full re-evaluation on September ***, 2018. When a parent requests an evaluation, a school district is required, not later than the 15th school day after the date the district receives the request, to provide the parent with prior written notice of its proposal to conduct an evaluation or provide notice of its refusal to conduct an evaluation. 19 Tex. Admin. Code § 89.1011(b). The school district is required to complete the evaluation not later than the 45th school day (excluding absences of three days or more) following the date on which the school district receives written consent for the evaluation from the student's parent. 19 Tex. Admin. Code § 89.1011(c)(1).

The need for a homebound placement was discussed, and Student's parent agreed to a functional behavior assessment (FBA) to re-evaluate Student's ***. The August *** ARD Committee ended in consensus.

In this case the District provided notice and obtained consent to re-evaluate during the September ***, 2018 ARD Committee meeting. However, the notice and consent were limited to changing Student's OHI eligibility from *** to ***. Student's *** was not re-evaluated. The District then created an addendum to Student's FIE noting Student has been identified for *** and OHI on February ***, 2017. Based upon the 2017 evaluation data and newly obtained information from Student's physicians, the October ***, 2018 FIE Addendum modified the basis of Student's OHI but Student's *** identification remained unchanged. The FIE Addendum stated, "[Student's] *** was not in question at this time. Therefore, [Student] continues to meet criteria for both OHI and ***." The evidence shows that Student's *** had been in question since at least September ***, 2018.

In addition to Petitioner's written request to re-evaluate for ***, the District had reason to suspect the *** identification might not be appropriate after Student's parent gave the ARD Committee information about *** at the August ***, 2018 meeting. At that ARD Committee meeting the District learned *** can suffer from ***. ***.

The Hearing Officer concludes that no later than September ***, 2019, the District was on notice Petitioner requested a re-evaluation for ***. Moreover, all of the ARD Committee documents admitted into evidence reflect Student's ongoing "****" issues. The notice and consent for the FIE OHI Addendum did not satisfy the District's duty to perform *** re-evaluation within 45 school days. Based upon the District's 2018-2019 calendar, and not counting Student's frequent absences, the District should have complete the *** re-evaluation on or about November ***, 2018. That deadline is extended for absences of 3 or more days. 19 Tex. Admin. Code § 89.1011(c)(1). The failure to re-evaluate Student's *** was a procedural error but it was not a denial of FAPE.

2. Functional Behavior Assessment

During the August ***, 2018 ARD Committee meeting the District proposed conducting an FBA 4 to 6 weeks after the start of the 2018-2019 school year. The delay was intended to afford Student an opportunity to acclimate to the new school year prior to conducting the FBA. The District obtained consent for the FBA on September ***, 2018 and it was scheduled to be completed by November ***, 2018 (within 45 school days). Student's parent withdrew consent for the FBA on October ***, 2019 and argues the FBA was unnecessary and inappropriate.

In developing an IEP, the IDEA requires that the ARD Committee address behavior management whenever a student's behavior is interfering with the child's ability to benefit from Student's educational programming. Specifically, the IDEA states that the IEP team must consider the child's need for the use of "positive behavioral interventions and supports" in the case of a student with a disability whose "behavior impedes [Student's] learning of that of others." 34 C.F.R. § 300.324(a)(2)(i).

The failure to conduct an adequate FBA is a serious procedural violation because it may prevent the [school district] from obtaining necessary information about the student's behaviors, leading to their being addressed in the IEP inadequately or not at all. As described above, such a failure seriously impairs substantive review of the IEP because courts cannot determine exactly what information an FBA would have yielded and whether that information would be consistent with the student's IEP. The entire purpose of an FBA is to ensure that the IEP's drafters have sufficient information about the student's behaviors to craft a plan that will appropriately address those behaviors. *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167, 190 (2nd Cir. 2012).

While an FBA may help the ARD Committee address behavioral issues, the IDEA does not require the District to conduct an FBA in order to meet this requirement if behavior is adequately addressed in the BIP and/or IEP. *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir. 2012) ("The regulations suggest—but do not require—that an FBA be used to develop a BIP."), citing 19 Tex. Admin. Code § 89.1055 (2012); *R.E. v. New York City Dep't of Educ.*, 694 F.3d at 190 (2nd Cir. 2012) ("The failure to conduct an FBA will not always rise to the level of a denial of a FAPE, but when an FBA is not conducted, the court must take particular care to ensure that the IEP adequately addresses the child's problem behaviors.").

Student's FIE and the ARD Committee documents admitted into evidence clearly reflect Student's behavior, regardless of the causes, interfered with Student's ability to benefit from Student's educational programming. The *** presentation given by Student's parent to the ARD Committee also raised significant behavior questions. The IDEA imposes an obligation on school districts to ensure that the child is assessed in all areas related to the suspected disability. "If a child's behavior or physical status is of concern, evaluations addressing these areas must be conducted." 71 Fed. Reg. 46,643 (2006). The credible evidence in this case clearly demonstrates Student is in need of a FBA.

D. Placement

Petitioner alleges Student has not been placed in Student's least restrictive environment (LRE). The dispute centers on a homebound placement. Petitioner contends Student's placement

is inappropriate because the District continued to attempt to maintain Student's general education placement, continued to provide Student with *** (***), and failed to timely consider homebound services for Student.

The IDEA's implementing regulations require, to the maximum extent possible, that children with disabilities are educated with their non-disabled peers in the least restrictive environment. *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993); 34 C.F.R. § 300.114(a)(2)(i). Disabled students may only be removed from the regular classroom if the nature or severity of the child's disability is such that education in the regular classroom with use of supplemental aids and services cannot be achieved satisfactorily. School districts must both seek to mainstream handicapped children and, at the same time, must tailor each child's educational placement and program to Student's special needs. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989); 20 U.S.C. §§ 1412(1), 1412(5)(B); 34 C.F.R. § 300.114(a)(2)(ii). Furthermore, school districts are required to consider a continuum of alternative placements, including homebound. 34 C.F.R. § 300.115; *see* 19 Tex. Admin. Code § 89.63(c).

A homebound student is removed from the school setting and is deprived of the opportunity to interact with non-disabled peers. The special education system includes a spectrum of environments, the least restrictive being regular classrooms, the most restrictive being residential placement. *El Paso Indep. Sch. Dist. v. Robert W. by Judy W.*, 898 F. Supp. 442, 450 (W.D. Tex. 1995).

Homebound is a restrictive placement intended to educate students who are too ill or have other medical conditions that prevent attending school:

Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be

provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section. 19 Tex. Admin. Code § 89.6(c)(2).

The February ***, 2018 annual ARD Committee meeting documented significant attendance problems relating to Student's ***. The Committee noted Student missed *** full days of school, missed *** half days, and missed *** times. The August ***, 2018 ARD Committee meeting discussed the possible need for a homebound placement but decided on a schedule adjustment consisting of moving *** support to Student's *** and moving substantive/academic courses to the end of the school day when Student was more alert.

The ARD Committee re-convened on September ***, 2018, at the start of the current 2018-2019 school year to revise Student's IEP. More attendance and work completion problems were documented. The ARD Committee discussed and decided against a full-day schedule in a self-contained setting because such a placement would not address Student's ***. A homebound placement was also discussed but the Committee decided to attempt a partial-day schedule because it is less restrictive, there were concerns Student would never return to school if placed on homebound, and there was the belief a partial-day schedule would adequately address Student's needs.

The September ***, 2018 ARD Committee ultimately decided to implement a phased-in partial day schedule. The ARD Committee agreed to reconvene during the week of October ***, 2018 to discuss progress and make any needed schedule revisions. The ARD Committee reconvened on October ***, 2018. Petitioner requested the Committee waive the District's requirement that Student be absent for 4 days prior to qualifying for a homebound placement. The District responded that in September 2018 it had previously considered modifying the requirements for a homebound placement but decided to implement the less restrictive partial-day schedule.

On November ***, 2018, the ARD Committee convened to implement an IEP amendment to address the need for a homebound placement. Petitioner chose not to attend the meeting. The

Committee noted Student's grades reflected academic progress (*e.g.*, *** (***), *** (***), *** (***) and *** (***)), but Student struggled to maintain the pace with the general education class with four hours of homebound instruction per week. The ARD Committee proposed revising Student's homebound schedule to one hour of homebound instruction for each consecutive day of class missed, including the two days prior to the start of homebound. The proposed homebound placement was designed to allow an additional hour of homebound service for weeks in which there are five school days. In addition, because of data that indicated Student's ability to work for sustain periods of time fluctuated from day-to-day, the description of homebound services included, "Allow flexible scheduling, which will take into account [Student's] alertness on a particular day. Allow two weeks for the completion of assignments and/or exams at the end of the grading period. At which time, [Student] will receive any 'banked' hours of [homebound] instruction not already provided."

The credible evidence showed the District clearly considered the need for homebound placement. It is equally clear the District appropriately attempted to mainstream Student and, at the same time, attempted to tailor Student's educational placement and program to Student's unique needs. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989); 20 U.S.C. §§ 1412(1) and (5)(B); 34 C.F.R. § 300.114(a)(2)(ii). Furthermore, the Districts did consider a continuum of alternative placements, including homebound. 34 C.F.R. § 300.115.

VIII. CONCLUSIONS OF LAW

1. The District is an Local Education Agency responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding, and the District is required to provide each disabled child with a FAPE pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Student, by Student's next friend, bears the burden of proof on all issues raised in Petitioner's complaint. *Schaffer ex rel. v. West*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. At all relevant times Student's IEPs provided a FAPE and contained all required components of an IEP, including present levels of performance, and measurable goals. 20 U.S.C. § 1414(d)(1)(A); 34 C.F.R. § 300.320(a); 19 Tex. Admin. Code § 89.1055.

4. The District timely updated Student's OHI eligibility from the *** disorder of *** to the *** disorder of *** and at all times provided appropriate accommodations reasonably calculated to meet Student's individualized needs. 20 U.S.C. §§ 1401(3), 1412(a)(3), 1415(f)(3)(A)(i); 34 C.F.R. §§ 300.111(a)(i), 500.513(a)(1); *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 462 (N.D. Tex. 2016), *aff'd in part, rev'd in part*, 865 F.3d 303 (5th Cir. 2017).
5. Student has been properly identified as a student eligible for special education as a student with ***. 20 U.S.C. §§ 1401(3), 1401(30), 1412(a)(6)(B), 1414(b)(1)-(3); 34 C.F.R. §§ 300.8(b)(4)(i), 300.303, 300.304(b)(1), 300.305.
6. Student's behavior interferes with Student's ability to benefit from Student's educational programming necessitating the need for a FBA and BIP. 20 U.S.C. § 1414(d)(3)(B)(i); 34 CFR 300.324(a)(2)(i); *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir. 2012); *R.E. v. New York City Dep't of Educ.*, 694 F.3d 167, 190 (2nd Cir. 2012).
7. The District consistently considered recommendations of Student's parent and private providers. 20 U.S.C. § 1414(c); 34 C.F.R. § 300.305(a).
8. At all relevant time periods Student was placed in Student's LRE and the District timely considered Student's need for homebound services. 20 U.S.C. §§ 1412(1), 1412(5)(B); 34 C.F.R. §§ 300.114(a)(2)(ii), 300.115; 19 Tex. Admin. Code § 89.63(c); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).
9. The District failed to timely re-evaluate Student's ***. 20 U.S.C. § 1412(a)(3); 34 C.F.R. §§ 300.301(b), 300.111(c)(1); 19 Tex. Admin. Code § 89.1050(d).
10. The failure to timely re-evaluated Student's *** did not deny Student a FAPE. 20 U.S.C. § 1415(f)(3)(A)(i); 34 C.F.R. § 500.513(a)(1).
11. All of Petitioner's claims arising under any laws other than the Individuals with Disabilities Education Act are outside the jurisdiction of a special education hearing officer in Texas. 20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. §§ 300.503(a); 300.507; 19 Tex. Admin. Code § 89.1151(a).

IX. ORDERS


Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **GRANTED IN PART AND DENIED IN PART** as follows:

1. Within 30 school days from the issuance of this final decision, and upon obtaining parental

consent, the District will re-evaluate Student's ***. The re-evaluation shall be completed within the timeframe specified in 19 Tex. Admin. Code § 89.1011(c)(1).

2. All other requests for relief not specifically state in these Orders is hereby **DENIED**.

SIGNED June 28, 2019.


David A. Berger
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO 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. 20. U.S.C. § 1415 (i)(2); 19 Tex. Admin. Code Sec. 89.1185 (n).