

DOCKET NO. 280-SE-0817

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

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

STUDENT b/n/f PARENT and PARENT (“Petitioner” or “Student”) brings this action against the Leander Independent School District (“Respondent” or “District”) under the Individuals with Disabilities Education Act, as amended, 20 U.S.C. §§ 1400 *et. seq.* (“IDEA”) and its implementing state and federal regulations.

The main issue in this case is whether the District provided Student with a free, appropriate public education (FAPE) during the 2016-2017 school year. After review of the evidence and the closing arguments of the Parties, the Hearing Officer determined that Petitioner did not meet Petitioner’s burden of proof on any of the contested hearing issues and denied the requested relief.

A. Legal Representatives

Student was represented by Attorneys Sonja Kerr and Devin Fletcher of the Cuddy Law Firm. The District was represented by its General Counsel, Jennifer J. Wells, and Attorney Kelly J. Shook of Walsh, Gallegos, Trevino, Russo and Kyle, P.C.

B. Resolution Session and Mediation

The Parties conducted an unsuccessful Resolution Session on August 21, 2017, and subsequently chose not to pursue mediation.

C. Continuances

After finding good cause, continuances and extensions of the decision due date were granted on September 12, 15, 20, and 22, 2017. Order Number 3 was issued September 12, 2017 at the District's request to permit additional time to receive medical records, Order Numbers 6 and 7 were issued on September 15 and 20, 2017, at Petitioner's request due to a conflicting setting in federal district court, and Order Number 8 was issued September 22, 2017, to accommodate the District's staffing schedule.

D. Preliminary Motions

Several preliminary motions were disposed of prior to hearing, including an order on August 30, 2017 (denying District's partial motion to dismiss non-IDEA claims and sufficiency challenge), four motions for continuances, and an order on October 17, 2017 (granting Petitioner's motion for telephonic testimony).

II. DUE PROCESS HEARING

The due process hearing was conducted on November 1-2, 2017. Petitioner continued to be represented by Attorneys Sonja Kerr and Devin Fletcher of the Cuddy Law Firm. The District continued to be represented by its General Counsel, Jennifer J. Wells, and Attorney Kelly J. Shook of Walsh, Gallegos, Trevino, Russo and Kyle, P.C. ***, District Coordinator of Special Education, also participated in the hearing as a District party representative. The hearing was recorded and transcribed by a certified court reporter.

On November 7, 2017, the Hearing Officer granted the Parties' joint motion to extend the post-hearing schedule and extension of the decision due date for good cause so the Parties could prepare closing briefs with the benefit of the hearing transcript.

III. ISSUES

A. Petitioner's Issues

Free Appropriate Public Education (FAPE)

1. Has the Respondent denied Student FAPE reasonably calculated to enable Student, consistent with the requirements of the IDEA as described in *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988 (2017), by providing Student an Individualized Education Plan (IEP) that was appropriately ambitious in light of Student's circumstances and consistent with the requirements of the *Endrew F.* case?
2. Has the Respondent failed to provide the student FAPE by not providing present levels of performance on which appropriate, measurable goals could be based, and by using goals that cannot be measured due to lack of accurate baselines?
3. Did the Respondent fail to provide the student with FAPE by not creating and/or implementing an adequate behavior intervention plan (BIP)?
4. Did the Respondent fail to provide FAPE by socially promoting Student when Student clearly was not meeting the goals in Student's IEP?

Procedural Violations

5. Has the Respondent failed to provide the student a FAPE by predetermining that it would deny Petitioner's request to reimburse for private school tuition and costs without holding an Admission, Review, and Dismissal committee (ARDC) meeting where private school was fully and fairly discussed as envisioned by the United States Supreme Court in *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359 (1985)?
6. Has the Respondent failed to ensure the collaborative, cooperative Admission, Review, and Dismissal (ARD) process required by the IDEA and Texas law and significantly impeded parental involvement in the IEP process during the 2016-2017 school year?

7. Did the Respondent fail to comply with prior written notice, as required by the IDEA and Texas law, by issuing the three-page letter from the school district Special Education Director on May ***, 2017?
8. Did the Respondent fail to comply with prior written notice requirements each time it summarily refused or denied a parental request made at ARDC meetings and in writing to Respondent during the 2016-2017 school year?

B. Respondent's Legal Position and Additional Issues

Respondent entered a general denial for all claims and allegations in Petitioner's complaint. In addition, Respondent disputed the facts upon which Petitioner's claims and allegations are based.

IV. REQUESTED RELIEF

A. Petitioner's Requested Relief

1. Private placement of Student at the *** (***) in Austin, Texas.
2. Reimbursement by Respondent of Student's parents for the cost of educating Student at the *** from the beginning of the 2017-2018 school year to the date of the Hearing Officer's decision in this case. Reimbursement to include the cost of tuition and related services, including tutoring and academic language therapy.
3. Prospective payment by Respondent for the Student's education at *** from the date of the hearing decision going forward. Payment to cover the cost of tuition and related services, including tutoring and academic language therapy.
4. Compensatory education services in the areas of reading, math, and behavior to remedy a denial of FAPE during the 2016-2017 school year.

B. Respondent's Requested Relief

Respondent requests a denial of all of Petitioner's claims and requested relief.

V. FINDINGS OF FACT

1. Student is a *** child eligible for special education services as a student with a Specific Learning Disability (SLD) for Reading Fluency Skills and Mathematics Calculations, and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). Student also receives services for Dyslexia.¹
2. In 2013, Student was diagnosed by a physician with *** (***), ***, ***, ***, and ***. Student was diagnosed with ***, ***, ***, ADHD (combined type), and *** by a psychologist on January ***, 2015.²
3. ***.³
4. The accrual date for statute of limitations purposes was August 15, 2016.⁴
5. Student enrolled in the District and began *** at the beginning of the 2013-2014 school year.⁵ Student attended *** until Student withdrew on August ***, 2017, and was unilaterally privately placed at the *** ***.⁶
6. Student is a “kind and caring person who loves school and helping others.”⁷
7. Student has not attended a District school during the current 2017-2018 school year; Student has been attending ***.⁸

Issue No. 1: Has the Respondent denied Student a FAPE reasonably calculated to enable Student, consistent with the requirements of the IDEA as described in *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988 (2017), by providing Student an IEP that was appropriately ambitious in light of Student’s circumstances and consistent with the requirements of the *Andrew F.* case?

¹ Joint Exhibit (JE) 10 at 2, 20.

² JE-4 at 1; RE-2 at 10.

³ JE-4 at 1.

⁴ Order No. 3 at 4; Complaint at 2 (“Petitioner Parents are not seeking an exception to the Statute of Limitations.”).

⁵ Complaint at 2.

⁶ JE-11.

⁷ JE-1 at 3.

⁸ Petitioner’s Exhibit (PE) at 15.

8. Student's initial Full and Individual Evaluation (FIE) was completed on May ***, 2015. Prior to being evaluated for special education, Student received services through a Section 504 plan and Response to Intervention support. An FIE was initiated at Student's Parents' request when Student continued to struggle academically.⁹
9. Student's initial FIE utilized a variety of assessment tools and sources of data collected from November 2013 through May 2015.¹⁰
10. Student's initial FIE identified deficits in receptive language, the ability to follow oral instructions, ***, the ability to retain information presented orally, ***, and the ability to organize and relate factual information.¹¹
11. Student's initial meeting of the ARDC convened on May ***, 2015. The ARDC determined Student was eligible for special education and related services as a student with OHI due to ADHD. An IEP was developed that contained Present Levels of Academic Achievement and Functional Performance (PLAAFs) that identified Student's strengths and weakness in Reading. The IEP included an occupational therapy (OT) evaluation, ***, and goals with short term objectives for behavior, ***, Language Arts, and Math. The IEP included an extensive and detailed list of accommodations and primarily placed Student in general education. The IEP did not include a Behavior Intervention Plan (BIP); instead behavior was to be addressed through accommodations. Student received instruction in a special education resource room for ***, and ***. All members of the ARDC, including Parents, agreed with the IEP.¹²
12. The ARDC reconvened on May ***, 2016 for the annual review of Student's IEP. Student continued to qualify as a student with an OHI due to ADHD. The new IEP contained PLAAFs that identified Student's strengths and weakness in ***, Math, and Behavior. The IEP noted progress on social and behavioral goals and contained *** goals with short term objectives for Behavior, and additional goals for ***, Language Arts, and Math. The IEP contained another detailed list of accommodations. Student was placed in general education except for ***, ***. *** and the *** were conducted in a special education Resource Room. In general education Student received *** minutes per day of direct inclusion support for *** and Math (***). Again, all members of the ARDC, including Parents, agreed with the IEP.
13. In the May 2016 IEP, OT services noted "great progress" with *** and "progress" with attention. Based upon this progress, the occupational therapist recommended a change from direct to consultative services. Parents expressed concern with the increased *** expectations for *** grade. The District agreed to continue providing direct OT support

⁹ Respondent's Exhibit (RE) 2 at 1.

¹⁰ RE-2 at 1-2.

¹¹ RE-2 at 2.

¹² RE-4.

- for *** and self-regulation.¹³
14. In May 2016 Student demonstrated social and behavior progress.¹⁴ The May 2016 IEP did not include a BIP.
 15. At the May 2016 ARDC meeting, Student's Mother presented an outside evaluation that reported auditory processing measures indicative of possible auditory integration deficit and temporal processing delay. The ARDC determined that Student did not qualify for services as a student with a Hearing Impairment and the District would address the concerns noted in the outside evaluation with accommodations.¹⁵
 16. The May 2016 ARDC requested additional evaluations for Dyslexia, Cognition and Achievement, and a Functional Behavioral Assessment (FBA) to be conducted and completed by August ***, 2016, prior to the start of the 2016-2017 school year.
 17. The ARDC convened to revise Student's IEP on October ***, 2016, November ***, 2016, and January ***, 2017. These meetings established Student continued to struggle with behavior, specifically the ability to "self-advocate," the ability to ***, and reading fluency. Behavior goals were changed and a Reading goal was added to address fluency. The occupational therapist agreed to Parents' request to utilize *** (***). A BIP was implemented and behavioral progress was noted during this revision period (***). *** minutes of additional inclusion support was added to assist with reading fluency; progress with reading fluency was noted. The setting for Student's *** instruction was changed from the general education classroom to the special education Resource Room with *** minute session per week. Parents requested an Independent Educational Evaluation (IEE) for the FBA and BIP. The District requested that Student be evaluated for an Emotional Disturbance (ED).¹⁶
 18. The October 2016 meeting convened to review the results of the FBA. Parents disagreed with the results of the FBA and the District agreed to a FBA IEE.¹⁷
 19. Student's ED evaluation was completed on January ***, 2017. The ED evaluation concluded Student did not qualify for special education and related services as a student with an ED.¹⁸
 20. The ED evaluation examined data from the FBA IEE and noted behavioral progress,

¹³ JE-1 at 2.

¹⁴ JE-1 at 22.

¹⁵ JE-1 at 22.

¹⁶ JE-5.

¹⁷ JE-9 at 1-2.

¹⁸ JE-6.

based upon observation data, towards Student's IEP Behavior Goals *** (***).¹⁹

21. On January ***, 2017, the ARDC implemented a BIP dated October ***, 2016 that identified targeted behaviors (***), replacement behaviors, and preventive strategies.²⁰
22. The FBA IEE was performed by ***, BCBA, *** (***)²¹. The *** report was completed April ***, 2017, and included classroom observations and Parents completion of a Functional Analysis Screening Tool. The *** report concluded that District staff did not understand the antecedents to Student's behavior resulting in staff ignoring and thus reinforcing Student's *** behaviors. The *** report recommended a BIP that targets *** and *** and suggested strategies to teach replacement behaviors.²²
23. On April ***, 2017, Parents provided written notice of Student's unilateral withdrawal and notice of private placement, a request for reimbursement for private summer school/extended school year, tutoring, OT services, and behavioral *** supports.²³
24. In response to the notice of withdrawal, the District sent Parents a letter detailing the District's previous actions to provide a FAPE and discussed the services it was willing to provide in the future. The letter was dated May ***, 2017.²⁴
25. The ARDC convened on June ***, 2017, for the second annual review of Student's IEP. In addition to OHI, the ARDC determined that Student was eligible for special education and related services as a student with a Specific Learning Disability (SLD).
26. The June 2017 IEP noted significant deficiencies in Student's reading fluency, ***, math, and behavior. The same behavior challenges continued to be noted in the June 2017 IEP (***)²⁵.
27. The June 2017 IEP contained benchmarks, PLAAFs for Reading, ***, Math, and Behavior, and clearly written measurable goals for Behavior (***), ***, Reading, and Math. The IEP included a detailed and extensive list of accommodations. The IEP discharged Student from OT after the ARDC concurred with the occupational therapist's recommendation that Student did not require specific sensory strategies in the classroom. Student continued to receive instruction and support in both general education and special education settings. Dyslexia services were continued in general education along with

¹⁹ JE-5 at 6; JE-6 at 13.

²⁰ JE-5 at 17-20.

²¹ JE-7; PE-25.

²² JE-7.

²³ JE-8 at 3.

²⁴ JE-9.

²⁵ JE-10 at 4.

support for *** and Math (*** minutes per day each, *** times per week each, to reteach skills and provide accommodations). Student also continued to receive ***, *** instruction (*** minutes per week) and *** support (*** minutes per week) in special education. The June 2017 IEP added *** Services (*** minutes sessions per school year), and *** Services (*** week grading period). The June 2017 ARDC ended in non-consensus.²⁶

28. During the June 2017 ARDC, teachers shared anecdotal information concerning Student's progress in behavior ("[Student] is easily redirected"), Reading, and noted continued struggles in Math.²⁷
29. On August ***, 2017, Parents sent a second notice of Student's unilateral withdrawal and notice of private placement, and a request for reimbursement.²⁸
30. Progress reports during the relevant time period reflect academic and non-academic progress over time with increasing expectations of proficiency and mastery.²⁹

Issue No. 2: Has the Respondent failed to provide the student FAPE by not providing present levels of performance on which appropriate, measurable goals could be based, and by using goals that cannot be measured due to lack of accurate baselines?

31. Baselines are necessary to measure IEP goals.³⁰
32. During the relevant time period, Student's *** was the individual ultimately responsible for data collection used to determine baselines for each IEP goal.³¹
33. Student's May ***, 2016 IEP included PLAAFs identifying strengths and weaknesses in Reading, ***, Math, and Behavior. The results of local benchmark testing were included in the IEP. Objective and measurable annual goals for Behavior (*** goals), ***, Language Arts, and Math were provided.³²
34. The ARDC revised Student's IEP on August ***, 2016. This IEP contained PLAAFs for Reading, OT (Speech), ***, Math, and Behavior. It contained annual goals for Behavior

²⁶ JE-10.

²⁷ JE-10 at 24-25.

²⁸ JE-11.

²⁹ JE-13; PE-1.

³⁰ Tr. at 451.

³¹ Tr. at 448.

³² JE-1 at 2-11.

- (*** goals), ***, *** (***), and Math.³³ New baselines were not determined prior to revising Student's IEP goals.
35. The ARDC convened to revise Student's IEP on October ***, 2016, November ***, 2016, and January ***, 2017. These meetings established Student continued to struggle with behavior, specifically the ability to "self-advocate," the ability to ***, and reading fluency. Behavior goals were changed and a Reading goal was added to address fluency.³⁴
36. The evidentiary record contains Benchmark testing results from 2015 through 2017 reflecting present levels of performance in Reading, Math, and ***. The Benchmark testing for 2017 indicates Student performed at grade level in *** of *** and *** benchmark tests. Student was performing below grade level in *** of *** and *** benchmark tests.³⁵
37. The June 2017 IEP contained PLAAFs for Reading, OT (Speech), ***, Math, and Behavior. It included clearly written and measurable goals for Behavior (*** goals), ***, Reading, and Math.³⁶
38. By June 2017, Student made significant progress towards or mastery of *** Behavior goals as compared to August 2016. The rigor for mastering these *** goals was increased. The *** Behavior goal (***) reduced the rigor for mastery when compared to the August 2016 IEP.³⁷
39. Student made no progress towards mastering Student's *** goal in June 2017. The same *** goal was carried over from the August 2016 IEP.³⁸
40. Student made slight progress towards mastering Student's Reading goal by June 2017. The goal and the rigor for mastery were carried over from the August 2016 IEP.³⁹
41. Student's August 2016 IEP contained *** Math goals. Student did not master Student's 2016 Math goals. The June 2017 IEP contained a completely different Math goal and dropped the *** previous goals. The prior Math goals concerned using ***. The June 2017 IEP created a new goal of solving Math word problems. The Math PLAAF in the June 2017 IEP noted significant progress (***) ***.⁴⁰

³³ JE-3 at 1-10; TR. at 453.

³⁴ JE-5.

³⁵ PE-3.

³⁶ JE-10.

³⁷ Compare JE-5 at 5-9 with JE-10 at 8-11.

³⁸ JE-10 at 9.

³⁹ Compare JE-5 at 9 with JE-10 at 10.

⁴⁰ Compare JE-5 at 8 with JE-10 at 3, 10.

48. Student had no disciplinary referrals during 2016-2017 school year.⁵⁰
49. Staff attempted to support Student's behavior *** by attempting to make a personal connection with Student and create a safe environment for Student with people Student could trust. The District did not utilize a punishment based disciplinary system with Student.⁵¹
50. Student's *** were an additional behavior support and were described as ***."⁵² These periods involved providing Student positive reinforcements by discussing what was going well that day, providing praise, and providing rewards as reinforcement.⁵³
51. Student's behaviors were manageable and the frequency of problem behaviors quickly began receding while Student was in school.⁵⁴
52. The District utilized Cognitive Behavior Therapy (CBT) with Student focusing on how thoughts and emotions are linked together and impact one another to help with emotional regulation. CBT strategies were devised by the District's Licensed Specialist in School Psychology (LSSP) as an indirect support and those strategies were applied by teachers.⁵⁵
53. The District implemented some of the recommendations from the independent FBA report into Student's BIP. Additional strategies to address behavior, and consideration of response costs as an opportunity to re-earn rewards were added to the plan.⁵⁶

Issue No. 5: Did the Respondent fail to provide a FAPE by socially promoting the student, when Student clearly was not meeting the goals in Student's IEP?

54. Based upon assessments, report cards, and documented academic and non-academic progress, Student was not improperly socially promoted.⁵⁷

Issue No. 6: Has the Respondent failed to provide the student a FAPE by predetermining that it would deny Petitioner's request to reimburse for private school tuition and costs without holding an ARD committee meeting where private school was fully and fairly discussed as envisioned by the United States Supreme Court in *Burlington School Committee v. Massachusetts Department of*

⁵⁰ Tr. at 399.

⁵¹ Tr. at 431.

⁵² Tr. at 434.

⁵³ Tr. at 434.

⁵⁴ Tr. at 488.

⁵⁵ Tr. at 551-52.

⁵⁶ Tr. at 552.

⁵⁷ Tex. Ed. Code § 28.021; JE-1 at 22-23; JE-4; JE-5; JE-10 at 24-25; JE-13; and JE-15.

Education, 471 U.S. 359 (1985)?

55. Parents sent notices of immediate unilateral private placement and request for tuition reimbursement on April ***, 2017 and August ***, 2017.⁵⁸ The August ***, 2017 notice expressly rejected the June ***, 2017 IEP. Parents provided 10 days between the notice, withdrawal, and the private placement.
56. On May ***, 2017, in response to Parents' April 2017 notice of private placement, the District Director of Special Education sent Parent a detailed letter outlining Student's special education history, the District's efforts to collaborate, and its determination Student has been provided a FAPE.⁵⁹
57. At no time since April ***, 2017 has the ARDC convened to formally consider and decide the appropriateness of a private placement.
58. The last ARDC meeting was conducted on June ***, 2017. Counsel for Petitioner attended that meeting, but terminated it prior to its conclusion due to time constraints. Neither side addressed private placement at this meeting. Petitioner requested they be provided a copy of the proposed IEP at the conclusion of the June ***, 2017 meeting and agreed to a 10 day recess. The District provided Parent with a copy of the proposed IEP on June ***, 2017. Petitioner never replied to the District's request to reconvene after the 10 day recess.⁶⁰
59. Parents were provided Prior Written Notice (PWN) concerning the decisions and/or proposals made by the ARDC on June ***, 2017.⁶¹ Parents were also provided a copy of the Procedural Safeguards (April 2016 edition) at some unspecified time.⁶²

Issue No. 7: Has the Respondent failed to ensure the collaborative, cooperative ARD process required by the IDEA and Texas law and significantly impeded parental involvement in the IEP process during the 2016-2017 school year?

60. ***. The District's Coordinator for Special Education began attending ARDC meetings after the *** and announced during an ARDC meeting for Student that she would be attending meetings because ***.⁶³
61. Mother perceived that the dynamics of Student's ARDC meetings immediately changed

⁵⁸ JE-8; JE-11.

⁵⁹ JE-9.

⁶⁰ JE-10 at 25; Tr. at 366-68, 454-55.

⁶¹ JE-10 at 25.

⁶² JE-16.

⁶³ Tr. at 323, 349-50, 357.

from being cooperative and collaborative to something less after the District's Coordinator for Special Education started attending the ARDC meetings. Teachers became reticent to speak and would look to the District Coordinator or other supervisory District personnel for approval before speaking. ***.⁶⁴

62. Student's June ***, 2017 ARDC was attended by Student's attorney. The LSSP's findings that Student did not qualify as a student for special education and related services as a student with an ED were discussed. Mother disagreed with the ED assessment findings.⁶⁵
63. Student's IEP was revised on October ***, 2016, November ***, 2016, and January ***, 2017. During the October 2016 meeting, Parents raised concerns with *** data and how it relates to IEP behavior goals, and Student's tendency to *** redirection from teachers. Parent requested that baseline data on existing goals be updated. At the November ***, 2016 ARDC, Parents requested an additional Reading goal, ***, additional inclusion time for reading (in addition to the dyslexia support already being provided), and an ED evaluation. During the January ***, 2017 ARDC, parents requested an FBA/BIP IEE.⁶⁶
64. In response to Parents' requests, the October ***, 2016, ARDC deleted *** existing behavior goals and proposed a new behavior goal, inclusion time was increased, and the District agreed to consider a new Reading goal.⁶⁷
65. The November ***, 2016 ARDC agreed to parental requests for ***, to increase inclusion time for Math from *** to *** minutes, and additional inclusion time for Reading to two *** minute sessions.⁶⁸
66. During the January ***, 2017 ARDC, the District approved Parents' request for an FBA/BIP IEE.⁶⁹

Issue No. 7: Did the Respondent fail to comply with prior written notice, as required by the IDEA and Texas law, by issuing the * letter from the school district Special Education Director on May ***, 2017?**

67. The District's May ***, 2017, letter described the action being refused by the District (funding private placement at ***), and explained why the District was refusing to fund the placement (because it believed it has and could continue to provide a FAPE).

⁶⁴ Tr. at 323, 349-50, and 357.

⁶⁵ JE-10 at 24-25.

⁶⁶ JE-5 at 2-4.

⁶⁷ JE-5 at 2.

⁶⁸ JE-5 at 3.

⁶⁹ JE-5 at 4.

Issue No. 8: Did the Respondent fail to comply with prior written notice requirements each time that it summarily refused or denied a parental request made at ARD committee meetings and made in writing to Respondent during the 2016-2017 school year?

68. During the relevant time period there were four IEP Revision ARDC meetings: August ***, 2016, October ***, 2016, November ***, 2016, and January ***, 2017.⁷⁰
69. August ***, 2016 ARDC: The minutes of the August ***, 2016, ARDC meeting do not reflect a request from Parents that was summarily refused or denied.
70. October ***, 2016 ARDC: PWN was not provided after this ARDC meeting reflecting the District's proposed actions.⁷¹
71. November ***, 2016: PWN was not provided after this ARDC meeting reflecting the District's proposed actions.⁷²
72. January ***, 2017: PWN was provided after this ARDC meeting reflecting the District's proposed actions.⁷³

VI. DISCUSSION

A. 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)(1)(A). Under the IDEA, the District has a duty to provide a FAPE 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 District had a duty to serve Student under the IDEA.

⁷⁰ JE-3, 5.

⁷¹ JE-5.

⁷² JE-5.

⁷³ JE-5 at 24.

A FAPE is special education, related services and specially 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); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

B. The Individualized Education Plan

In meeting its obligation to provide FAPE, the school district must have in effect an IEP for each child with a disability at the beginning of each school year. 34 C.F.R. § 300.323(a). 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 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).

C. The Four Factor 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. Application of the four factors to the evidence in this case supports the conclusion that the District's program was appropriate because the IEP designed and implemented by the District was reasonably calculated to provide the requisite educational benefit given Student's unique circumstances. *Rowley*, 458 U.S. at 206-20; *Endrew F. v. Douglas Cnty. Dist. RE-1*, 137 S.Ct. 988, 999-1000 (2017).

1. Individualized on the Basis of the Assessment and Performance.

The District's program was individualized on the basis of assessment and performance. Student received Student's initial FIE in May 2015. The FIE utilized a variety of valid assessment tools and sources of data collected from November 2013 through May 2015. The FIE identified numerous deficits and Student was identified as a student eligible for special education and related services as a student with an OHI based on ADHD. Since May 2015, Student received additional assessments for OT, handwriting, an FBA, an independent FBA, Dyslexia, cognition and achievement, and an ED evaluation. The ARDC also requested additional assessments.

Since May 2015, the ARDC convened six times to draft, implement, and revise Student's IEPs. An initial IEP was developed and agreed upon that contained PLAAFs in Reading, provided extensive accommodations, and placed Student in a mixed general and special education setting.

The first annual review of Student's IEP was conducted on May ***, 2016. The IEP was revised and Parents concurred. The new IEP included PLAAFs that identified Student's strengths and weaknesses in ***, Math, and Behavior. The May 2016 IEP contained numerous goals with short term objectives that met Student's needs, another extensive list of accommodations, and adjusted Student's mixed placement in general education and special education classes. The May 2016 IEP noted progress in OT, handwriting, attention, as well as socially and behaviorally.

Student's IEP was revised again on October ***, 2016, November ***, 2016, and January, ***, 2017. These ARDC meetings addressed Student's continued struggles with Behavior, *** math ***, and reading fluency. Although Student made behavioral progress, behavior goals were revised and a BIP was adopted. A Reading goal was added to help with fluency.

The January 2017 ARDC reviewed the ED evaluation. The independent FBA indicated Student made progress on two of Student's behavior goals. Additional inclusion support was added for Reading. Student made behavioral progress and in reading fluency.

Student's second annual IEP review and final ARDC meeting convened on June ***, 2017. This ARDC identified Student as eligible for special education as a student with a Specific Learning Disability for Reading Fluency and confirmed Student's eligibility as a student with an OHI due to ADHD. The June 2017 IEP contained benchmarks, PLAAFs for Reading, ***, Math, and Behavior. The IEP included clearly written measurable goals for Behavior (***), ***, Reading, and Math. The June 2017 IEP included a detailed and extensive list of accommodations that met Student's needs. Student continued to receive instruction and support in both general education and special education settings. Dyslexia services were continued in general education along with support for *** and Math. The June 2017 IEP added *** Services and *** Services.

While it is clear that Student continued to have minor behavior challenges (*e.g.*, ***) and ongoing struggles with reading fluency, the educational programming proposed and provided by the District was individualized on the basis of the Student's assessments and performance and was reasonably calculated to enable Student to make appropriate progress in light of Student's individual circumstances. *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988, 1000 (2017).

2. Least Restrictive Environment.

The District's program was delivered in the least restrictive environment. Based on Student's assessments and unique abilities, Student's educational program was designed to be delivered in a mix of general and special educational settings. Student was placed in the general education environment to the maximum degree feasible that allowed Student to continue to make academic and non-academic progress. Student's placement meets the statutory preference for educating Student, to the maximum extent appropriate, in general education. 20 U.S.C. § 1412(a)(5)(A).

3. Services Provided in a Coordinated, Collaborative Manner by the "Key" Stakeholders.

Student's services were, at least initially, provided in a coordinated, cooperative, and collaborative manner. Review of the evidence suggests the relationship between the Parties changed after ***. *** this lack of trust intensified. *** appear to have strained the statutorily envisioned cooperative process.

During the relevant time period, the rapport between the Parties can best be described as less than ideal in the context of the IDEA's vision of a cooperative and collaborative relationship; however, that does not mean Parents were denied the ability to meaningfully participate in Student's educational programming. The evidence shows that, despite the lack of a positive relationship between the Parties, Parents effectively advocated on behalf of Student. Furthermore, the District demonstrated a willingness to listen to parental concerns by making programming changes, conducting additional evaluations, adding and/or changing IEP goals, and adding supports and services. Although the degree of collaboration and cooperation envisioned by the IDEA was something far less than ideal it was sufficient to permit Parents to meaningfully participate in Student's special education.

4. Positive Academic and Non-academic Benefits are Demonstrated.

The evidence demonstrated Student derived an educational benefit from Student's IEP as shown through Student's academic progress reports, report card grades, and documented academic and non-academic progress. *Rowley*, 458 U.S. 176 (1982).

5. Conclusion.

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. *Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997); *Richardson Independent School Dist. v. Michael Z.*, 561 F.Supp.2d 589, 602 (N.D. Tex. 2007). Student's IEP was designed to and did provide Student with a "meaningful" educational benefit." *Rowley*, 458 U.S. at 192, 102 S.Ct. 3034; *see also Michael F.*, 118 F.3d at 248.

D. Issue No. 1: Has the Respondent denied Student a FAPE reasonably calculated to enable Student, consistent with the requirements of the IDEA as described in *Endrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988 (2017), by providing Student an IEP that was appropriately ambitious in light of Student's circumstances and consistent with the requirements of the *Endrew F.* case?

In *Endrew F.*, the Supreme Court held schools must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances. *See* 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV). The individualized focus on the particular student is at the core of the IDEA. The instruction offered must be "*specially designed*" to meet a child's "*unique needs*" through an "*individualized education program.*" 20 U.S.C. §§ 1401(29), (14) (emphasis added). An IEP is not a form document. It is constructed only after careful consideration of the student's present levels of achievement, disability, and potential for growth. 20 U.S.C. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv); *Endrew F.*, 137 S.Ct. at 999.

"Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the

course material.” Progress through this system is what our society generally means by an “education.” And access to an “education” is what the IDEA promises.

One of the components of a FAPE is “special education,” defined as “specially designed instruction ... to meet the unique needs of a child with a disability.” 20 U.S.C. §§ 1401(9), (29). Every IEP begins by describing a student’s present level of achievement, including explaining “how the child’s disability affects the student’s involvement and progress in the general education curriculum.” 20 U.S.C. § 1414(d)(1)(A)(i)(I)(aa). It then sets out “a statement of measurable annual goals ... designed to ... enable the child to be involved in and make progress in the general education curriculum,” along with a description of specialized instruction and services that the child will receive. 20 U.S.C. §§ 1414(d)(1)(A)(i)(II), (IV). The instruction and services must likewise be provided with an eye toward “progress in the general education curriculum.” 20 U.S.C. § 1414(d)(1)(A)(i)(IV)(bb); *Andrew F.*, 137 S.Ct. at 1000.

Student’s educational program during all relevant time periods complied with the legal standard set forth in *Andrew F.* Student’s IEPs were based upon a variety of assessments, contained PLAAFs, measurable goals, a schedule of services describing the special instruction and services, and Student achieved both academic and non-academic progress. While Student experienced persistent minor behavior issues and struggles with reading fluency Student made progress in these areas and in Student’s academic subjects. The IEP’s and overall educational programming provided Student a FAPE during the relevant time period and were consistent with the requirements of *Andrew F.*

E. Issue No. 2: Has the Respondent failed to provide the student FAPE by not providing present levels of performance on which appropriate, measurable goals could be based, and by using goals that cannot be measured due to lack of accurate baselines?

The documentary evidence shows Student’s IEPs during the relevant time period all contained baselines, PLAAFs, and clearly written measurable goals.

As the Supreme Court noted in *Andrew F.*, a student’s “present level of performance”

provides the benchmark ... the starting point ... from which to measure the student's progress. The next component of every IEP is measurable annual goals designed to allow the student to make progress, if possible, based upon the student's circumstances, in the general education environment. Meaningful progress is the key regardless of the educational setting.

The record contains benchmark testing from 2015 through 2017 reflecting PLAAFs in Reading, Math, and ***. The benchmark testing for 2017 indicated Student is performing predominately at grade level in *** and Reading and is below grade level in ***. The June 2017 IEP included benchmarks, PLAAFs for Reading, ***, Math, and Behavior. The June 2017 IEP contained clearly written and measurable goals. Goals were adjusted from the prior IEP and the rigor for goal mastery was modified where needed.

In addition to all the required structural components, the June 2017 IEP noted where Student was and was not making progress. Student made slight progress mastering Student's Reading goal and significant progress mastering Student's Behavior goals. No progress was indicated for Student's *** goal and the June 2017 IEP carried over Student's *** goal from the previous IEP. Student's Math PLAAF for the June 2017 IEP reported significant progress (an increase of ***) in *** but noted a lack of progress on mastering the Math IEP goal. The June 2017 IEP revised Student's Math goal from ***.

Student's IEPs during the relevant time period have all contained benchmarks, PLAAFs, and clearly written and measurable goals. Goals and mastery levels were appropriately adjusted periodically based upon Student's "present level" of ability and performance.

F. Issue No. 3: Did the Respondent fail to provide the student with FAPE by not creating and/or implementing an adequate BIP?

Student's IEPs have all contained BIPs since October ***, 2016. The issue raised by Petitioner is whether those BIPs were adequate. The evidence shows Student's behavioral plans provided appropriate and adequate interventions and strategies to address behaviors impacting Student's learning or the learning of others. 34 C.F.R. § 300.324(a)(2)(i). The IDEA requires

ARDC members to consider behavior that impedes the learning of the particular student or the learning of other students as a “special factor.” *Id.*

After the initial BIP was implemented in October 2016, a FBA was completed on November ***, 2016. The FBA identified minor behavior challenges and character strengths. Significantly, positive teacher comments gathered for the FBA included: ***.” Problem behaviors were identified as ***.

Starting in March 2016, teachers used daily behavior tracking charts as a behavior strategy to track Student’s conduct throughout the school day and utilized a self-assessment designed to facilitate discussion with Student and positively reinforce Student at the end of each day. Additional behavior support included Student’s *** with Student’s special education ***. The *** provided Student with positive reinforcement by discussing what went well that day, providing praise, and providing rewards as reinforcement. Behavior support also incorporated Cognitive Behavior Therapy strategies devised by the District’s LSSP.

Although the District did not fully accept the independent FBA, it did consider and incorporate the independent evaluator’s recommendations that strategies be added to the BIP to use after a targeted behavior occurs, and consideration of the response cost as an opportunity to re-earn rewards.

During the relevant time period, all of Student’s BIPs identified problematic or targeted behaviors, set out a list of appropriate replacement behaviors, devised preventive strategies and positive behavioral supports, and developed strategies for teaching replacement behaviors. The adequacy of the BIPs is reflected in the documented progress Student made on Student’s behavior goals, improved conduct report card grades, and the fact Student had no disciplinary referrals during the 2016-2017 school year.

G. Issue No. 4: Did the Respondent fail to provide a FAPE by socially promoting the student, when Student clearly was not meeting the goals in Student’s IEP?

Petitioner did not present testimony in support of their claimed social promotion violation. Upon questioning by the Hearing Officer, Petitioner indicated this claim was not abandoned at hearing and is supported by Petitioner's documentary evidence.⁷⁴ Based upon assessments, report cards, and documented academic and non-academic progress Student was not improperly socially promoted.⁷⁵ Petitioner did not meet their burden of proof on this issue. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).

H. Issue No. 5: Has the Respondent failed to provide the student a FAPE by predetermining that it would deny Petitioner's request to reimburse for private school tuition and costs without holding an ARD committee meeting where private school was fully and fairly discussed as envisioned by the U.S. Supreme Court in *Burlington School Committee v. Massachusetts Department of Education*, 471 U.S. 359 (1985)?

The difference between proper pre-meeting "preparation" by school district staff and "predetermination" is the district's willingness to listen to the parents' concerns. *P.F. and S.F. v. Board of Educ. of the Bedford Cent. Sch. Dist.*, 67 IDELR 148 (S.D.N.Y. 2016). "The mere fact that the IEP may not have incorporated every request from the parents does not render the parents 'passive observers' or evidence any predetermination. *S.M. v. Gwinnett County School Dist.*, 646 Fed. Appx. 763 (11th Cir. 2016); *R.L. v. Miami-Dade County School Bd.*, 757 F.3d 1173, 1187 (11th Cir. 2014) ("Predetermination occurs when the state makes educational decisions too early in the planning process, in a way that deprives the parents of a meaningful opportunity to fully participate as equal members of the IEP team."); and *Nack ex rel. Nack v. Orange City School Dist.*, 454 F.3d 604, 609 (6th Cir. 2006) ("Predetermination amounts to a procedural violation of the IDEA. It can cause substantive harm, and therefore deprive a child of a FAPE, where parents are 'effectively deprived' of 'meaningful participation in the IEP process.'").

⁷⁴ Tr. at 579.

⁷⁵ Tex. Ed. Code § 28.02.

Parents first notified the District in writing of their intention to withdraw Student and unilaterally pursue a private placement and made various requests for reimbursement on April ***, 2017. In response, on May ***, 2017, the District sent Parents a letter detailing the District's efforts to collaborate and provide a FAPE, and denied Parents' request for a District funded private placement. The record is unclear what, if anything, the Parties did in response to the May 2017 notice and response. The Parties conducted an annual IEP review on June ***, 2017, and Student remained enrolled in the District until August 2017.

Parents were represented by the Cuddy Law Firm during this time period and counsel attended the June ***, 2017, ARDC meeting. Counsel for Petitioner had ample opportunity to raise this issue during the June ***, 2017 ARDC meeting, but remained silent on the issue. Petitioner, who is represented "by impressively qualified and indisputably highly experienced" IDEA counsel (*See Petitioner's Complaint* at 8) never requested an ARDC meeting to consider the private placement. *See* 19 Tex. Admin. Code § 89.1050(e) (requiring the ARDC to convene within five days of receipt of a parental request for an ARDC).

On August ***, 2017, Parents sent a second notice of Student's unilateral withdrawal and notice of private placement and a request for reimbursement. Student filed Student's IDEA complaint *** days later on August 15, 2017. The District did not respond to the second notice.

Petitioner contends the District's response to the April 2017 notice of unilateral withdrawal and private placement is evidence that the District predetermined it would deny the request without parental input. The IDEA requires districts to ensure that the parents of each child with a disability are members of any group that makes decisions about their child's educational placement. 34 C.F.R. §§ 300.327, 300.501(c)(1). Predetermination occurs when school district members of the IEP team unilaterally decide a student's placement in advance of an IEP meeting. In *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004), *cert. denied*, 546 U.S. 936 (2005), when parents requested that the district fund an Applied Behavioral Analysis program, the IEP team refused and indicated its policy prevented it from considering a program other than the one in which it had invested. During IEP meetings, the

district allowed the parents to voice their opinion and present evidence regarding an appropriate program for their son, but it already had decided on his placement and educational methodology.

The record in this case does not support a finding that the District predetermined the request for a private placement and reimbursement. Instead, the record reveals that on May ***, 2017, the District sent its letter denying the request. The ARDC convened and conducted an IEP annual review *** days later on June ***, 2017. Petitioner could have raised this issue at that time. Parents were not denied the opportunity to provide meaningful input on this issue; they chose not to take advantage of the opportunity to discuss this topic at the June ***, 2017 ARDC meeting.

I. Issue No. 6: Has the Respondent failed to ensure the collaborative, cooperative ARD process required by the IDEA and Texas law and significantly impeded parental involvement in the IEP process during the 2016-2017 school year?

The evidence showed the cooperative and collaborative process envisioned and required by the IDEA had devolved *** between the Parties. The District has lost the trust and confidence of Student's parents. This loss of trust can be partially attributed to the District's conduct ***.

The District Coordinator for Special Education began attending ARDC meetings for Student in 2016 ***. The Coordinator announced at the first ARDC meeting she attended for Student she was present because, "****." Mother perceived the dynamics of the meetings changed after the Coordinator began attending and that District staff appeared reticent to speak during the meetings without first looking to the Coordinator, or some other District person in a supervisory position, for approval prior to speaking.

Even though the relationship between the Parties was something other than the collaborative and cooperative process envisioned by the IDEA, Parents were effective advocates for Student who meaningfully participated in Student's educational programming. In this case, the cooperation between the Parties was problematic, but it was sufficient to permit Parents to

meaningfully participate in Student's special education.

J. Issue No. 7: Did the Respondent fail to comply with prior written notice, as required by the IDEA and Texas law, by issuing the * letter from the school district Special Education Director on May ***, 2017?**

On May ***, 2017, the District responded to Parents' April ***, 2017 notice of private placement. The District Coordinator of Special Education sent a detailed letter outlining Student's special education history, the District's efforts to collaborate, and its determination Student has at all relevant times been provided a FAPE. The letter did not propose an ARDC meeting to consider the appropriateness of the unilateral private placement.

The District's May ***, 2017, response described the action being refused by the District – funding private placement at ***, and explained why the District was refusing to fund the placement (because it believed it has and could continue to provide a FAPE). The letter did not provide notice of procedural rights under 20 U.S.C. § 1415(c)(1)(C), did not provide sources for Parents to contact for assistance, and failed to provide a description of other options considered by the ARDC and why those options were rejected, or a description of the factors that were relevant to the District's refusal to fund the private placement at ***.

However, for Petitioner to obtain relief for an IDEA procedural violation there must be evidence the “procedural deficiency resulted in a loss of educational opportunity or infringed the parents' opportunity to participate in the IEP process.” *Adam J. ex rel. Robert J. v. Keller Independent School Dist.*, 328 F.3d 804, 812 (5th Cir. 2003). Given Parents' active participation in the crafting of Student's IEPs, and the absence of any demonstrable “lost educational opportunity,” the Hearing Officer concludes the procedural requirements of the IDEA were substantially satisfied, even if some required prior written notice information was omitted from the District's May ***, 2017, response letter. *Adam J.*, 328 F.3d at 812.

K. Issue No. 8: Did the Respondent fail to comply with prior written notice requirements each time that it summarily refused or denied a

parental request made at ARD committee meetings and made in written request to Respondent during the 2016-2017 school year?

During the relevant time period there were four IEP Revision ARDC meetings: August ***, 2016, October ***, 2016, November ***, 2016, and January ***, 2017. The August 2016 and the January 2017 both provided adequate prior written notice and the October 2016 and November 2016 ARDC meetings failed to provide prior written notice of the District's proposed actions or refusals. Because there was no demonstrable loss of an educational opportunity, coupled with the fact Parents fully participated in all four IEP revision ARDC meetings, the lack of complete prior written notice was educationally harmless and does not warrant relief. *Adam J.*, 328 F.3d at 812.

VII. 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 next friend, Parents, (collectively, Petitioner) bears the burden of proof on all issues raised in Petitioner's complaint. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. Student's IEPs during the relevant time period were appropriately individualized and ambitious to ensure Student made meaningful educational progress. 20 U.S.C. §1414(c)(1)(B)(iii)-(iv); 34 C.F.R. § 300.324(a)(2)(v), (a)(3)(ii), *Andrew F. ex rel. Joseph F. v. Douglas County School Dist. RE-1*, 137 S.Ct. 988, 999-1000 (2017).
4. The District did not impermissibly predetermine it would deny Petitioner's request to reimburse private school tuition and costs without first conducting an ARDC meeting to discuss the request. 34 C.F.R. §§ 300.327, 300.501(c)(1); *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004), *cert. denied*, 546 U.S. 936 (2005); *R.L. v. Miami-Dade County School Bd.*, 757 F.3d 1173, 1187 (11th Cir. 2014); *Nack ex rel. Nack v. Orange City School Dist.*, 454 F.3d 604, 609 (6th Cir. 2006).
5. At all relevant times Student's IEPs provided a FAPE and contained all required components of an IEP, including baselines, 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.
6. Student was not denied a FAPE by the lack of an adequate behavior intervention plan. 34

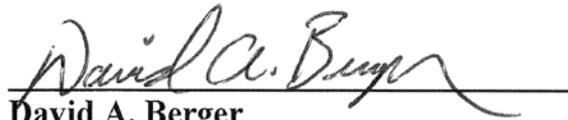
C.F.R. § 300.324(a)(2)(i).

7. Student was not improperly socially promoted. Tex. Ed. Code § 28.021.
8. The District did not fail to provide a collaborative and cooperative ARDC process that resulted in denying Parents the meaningful opportunity to participate in the IEP planning process. 20 U.S.C. § 1414(d)(1)(B)(i), 34 C.F.R. § 300.322(a), and 19 Tex. Admin. Code § 89.1050(g).
9. The District's failure to provide all required components of prior written notice explaining its proposed actions or refusals did not result in a loss of educational opportunity or infringe upon Parents' opportunity to participate in the IEP process." The errors were educationally harmless. *Adam J. ex rel. Robert J. v. Keller Independent School Dist.*, 328 F.3d 804, 812 (5th Cir. 2003).

VIII. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.

SIGNED the January 8, 2018.


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

IX. 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. 20. U.S.C. § 1415(i)(2); 19 Tex. Admin. Code § 89.1185(n).