

DOCKET NO. 014-SE-0916

STUDENT	§	BEFORE A SPECIAL DUCATION
b/n/f PARENT & PARENT	§	
Petitioner	§	
v.	§	HEARING OFFICER FOR THE
KILLEEN INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

STUDENT, by next friends Parents (hereinafter Petitioner or Student) requested an impartial due process hearing pursuant to the Individuals with Disabilities Act (IDEA), 20 U.S.C. § 1400 *et seq.* Killeen Independent School District is the Respondent to the complaint.

I. PROCEDURAL HISTORY

Petitioner filed the complaint with the Texas Education Agency (Agency) on September 20, 2016, and the case was assigned to this hearing officer on that date. The First Scheduling Order in this matter was issued on September 20, 2016, setting this case for a hearing on October 21, 2016. The initial prehearing conference in this matter was convened on October 3, 2016, and the hearing was reset for November 28-30, 2016 and December 1-2, 2016. On November 1, 2016, a prehearing was held and the hearing was reset for January 30-31, and February 1-3, 2017. On January 19, 2017, another prehearing conference was held. At the joint request of the parties, the due process hearing was continued and rescheduled for April 11-13, and April 17, 2017. A deadline of May 22, 2017 was set for post hearing briefs. The decision due date was set for June 22, 2017. The parties thereafter requested and were granted extensions to the post hearing brief and decision due date deadlines. The post hearing brief deadline was extended to June 21, 2017. The decision due date was re-set as July 24, 2017.

The hearing convened on April 11, 12, and 13, 2017 at the Killeen Independent School District in Killeen, Texas. A telephone hearing was held on April 17, 2017 to take the testimony of Dr. ***. Sonja Kerr and Idris Motiwala represented Petitioner. Merri Schneider Vogel and Geneva Taylor represented Respondent.

II. ISSUES AND PROPOSED RELIEF

A. Issues

In the complaint, Petitioner alleges that Respondent denied Student a free, appropriate public education (FAPE) and raised the issues below, which were noted in the *Order Following December 2nd And December 13th Pre-hearing Conferences* dated December 16, 2016: (1) Whether Respondent failed to provide Student with FAPE within the meaning of the IDEA during the 2015-2016 and 2016-2017 school years; (2) Whether Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 school years,

resulting in a denial of FAPE for Student; (3) Whether Respondent failed to educate Student in the least restrictive environment (LRE), and was this a violation of FAPE; (4) Whether during the 2015-2016 and 2016-2017 school years, Respondent failed to provide Parents prior written notice (PWN) pursuant to the IDEA, and was this a denial of a FAPE to Student; and (5) Whether Respondent failed to provide Parents a Notice of Procedural Safeguards prior to completing the October ***, 2015 FIE, and was this a denial of a FAPE.

Petitioner identified the following mixed sub-issues of law and fact in support of the broad issues above as follows:

I.

Whether Respondent failed to provide Student with a FAPE within the meaning of IDEA during the 2015-2016 and 2016-2017 school years.

- a. Whether Respondent failed to provide Student extended school year (ESY) services during the summer of 2016, and was this a denial of a FAPE.
- b. Whether Respondent failed to timely and fully implement Student's existing Individualized Education Program (IEP) from *** (***) upon Student's arrival in the District in September of 2015, and was this a denial of a FAPE.
- c. Whether Respondent failed to have an appropriate IEP in place for Student from September 2015 until approximately October ***, 2015, and was this a denial of FAPE.
- d. During the period of September 2015 through November ***, 2015, did Respondent fail to provide a FAPE to Student while Student was enrolled at *** by failing to provide any applied behavior analysis (ABA) based services, failing to provide sufficiently intensive speech and language services, and sufficiently intensive occupational therapy (OT) services.
- e. Whether the October ***, 2015 IEP failed to include clear present levels of performance to coincide with the goals and objectives, and was this a denial of a FAPE.
- f. Whether the baselines and the proposed growth/progress measurements of the October ***, 2015 IEP were vague and ill defined, so as to make the IEP insufficient, and was this a denial of a FAPE.
- g. Whether Respondent failed to provide Student any autism supplements between September 2015 through October ***, 2015, and was this a denial of a FAPE.
- h. Whether the autism supplement included in the October ***, 2015 IEP was deficient, and was this a denial of a FAPE.
- i. Whether the October ***, 2015 IEP was deficient and whether its implementation was a denial of a FAPE.

- j. Whether the March ***, 2016 IEP was deficient, and was the implementation of it a denial of a FAPE.
- k. Whether the March ***, 2016 IEP failed to include ABA services or *** (***), sufficient speech and language services, and OT services, and was this a denial of FAPE.
- l. Whether the March ***, 2016 IEP failed to include present levels of performance, goals or objectives for the use of an IPAD, and was this a denial of a FAPE.
- m. During the 2015-2016 school year, did Respondent fail to provide Parents with adequate in- home services, and was this a denial of a FAPE.
- n. Whether the in-home assessment completed by Respondent during the 2015-2016 school year was flawed, and was this a denial of a FAPE.
- o. Whether the March ***, 2016 IEP failed to provide ESY services for the summer of 2016, and was this a denial of FAPE.
- p. Did the October ***, 2015 IEP fail to provide ESY services for the summer of 2016, and was this a denial of a FAPE.
- q. During the 2015-2016 and 2016-2017 school years, did Respondent fail to provide Student with an autism supplement consistent with Student's unique needs including ABA based services and ***, and was this a denial of a FAPE.
- r. During the 2015-2016 and 2016-2017 school years, did Respondent fail to provide Student with a 1:1 special education trained (ABA trained) paraprofessional throughout Student's entire school day, and was this a denial of a FAPE.
- s. Whether Respondent illegally used restraints on Student during the 2015-2016 school year while Student attended ***, and was this a denial of a FAPE.
- t. Whether Respondent during the 2015-2016 school year while Student was at ***, failed to utilize a Functional Behavioral Assessment (FBA) and positive behavioral supports or behavior intervention plan (BIP) as required by IDEA, and was this a denial of a FAPE.
- u. Whether Respondent during the 2015-2016 school year, failed to provide Student with any supplementary aids and services throughout Student's entire school day at any time according to the October ***, 2015 ARDC/IEP, and was this a denial of a FAPE.
- v. During the 2015-2016 school year, did Respondent fail to provide appropriate assistive technology (AT) services to Student, and was this a denial of a FAPE.
- w. During the 2015-2016 school year, did Student stagnate or regress in Student's academic and non-academic skills while in programming at ***, and was this a denial of a FAPE.

- x. During the 2015-2016 school year, did Student stagnate and regress in Student's academic and non-academic skills while in programming at ***, and was this a denial of a FAPE.
- y. During the 2015-2016 school year, did Respondent fail to provide Student with an appropriate IEP that provided Student a meaningful education benefit, and was this a denial of a FAPE.
- z. Did the March 2016 IEP proposed by Respondent, provide Student with a deficient and inappropriate IEP for the 2016-2017 school year that would result in de minimus or trivial educational advancement, and was this a denial of a FAPE.
- aa. During the 2015-2016 and 2016-2017 school years, did Respondent fail to comply with all procedural requirements of the IDEA and Texas law, including PWN to Parents, and by doing so has Respondent impeded Student's rights to a FAPE and significantly impeded Parents opportunity to meaningfully participate in the decision- making process regarding the provision of a FAPE to Student, and has this cause a deprivation of a FAPE to Student, resulting in a denial of a FAPE.
- bb. During the 2015-2016 and 2016-2017 school years, did Respondent fail to have on staff and on Student's ARDC/IEP team, individuals trained in ABA based and peer reviewed, research based programming resulting in an incomplete ARDC/IEP team that failed to appreciate the necessity and importance of these critical services for Student, and was this a denial of a FAPE.
- cc. During the 2015-2016 and 2016-2017 school years, did Respondent fail to provide Student with sufficient speech and language services, and was this a denial of a FAPE.
- dd. During the 2015-2016 and 2016-2017 school years, did Respondent deny ESY services to Student, and was this a denial of a FAPE.
- ee. During the 2015-2016 and 2016-2017 school years, did Respondent violate 20 U.S.C. 1414 and 20 U.S.C. 1415 in its responses to parental requests for private services and private placement, and was this a denial of a FAPE.

II.

Whether Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 school years, resulting in a denial of a FAPE.

- a. Whether the October ***, 2015 FIE evaluation by Respondent was a full and comprehensive evaluation within the meaning of IDEA, and if not, was it a denial of a FAPE.
- b. During the 2015-2016 school year, did Respondent fail to provide Student with an assistive technology (AT) evaluation that was reasonably designed to determine Student's technology needs, and was this a denial of a FAPE.

III.

Whether Respondent failed to educate Student in the LRE during the 2015-2016 and 2016-2017 school years, and was this a denial of a FAPE.

- a. Whether Respondent during the period of September 2015 to November ***, 2015, failed to provide Student a FAPE in the LRE while the student was enrolled at ***.
- b. During the 2015-2016 school year, did Respondent fail to provide Student with an appropriate IEP provided in the LRE, and was this a denial of a FAPE

IV.

Whether during the 2015-2016 and 2016-2017 school years, Respondent failed to provide Parents PWN pursuant to IDEA, and was this a denial of a FAPE.

- a. Whether Respondent failed to provide Parents PWN that it would not be implementing the IEP from ***, and was this a denial of a FAPE.
- b. Whether Respondent failed to provide Parents PWN regarding which IEP would be implemented during the period of September and October of 2015, and was this a denial of a FAPE.
- c. Whether Respondent failed to provide Parents with compliant PWN pertaining to the March ***, 2016 ARD meeting regarding the reasons Student was denied ESY services for summer 2016, and private services or private school as requested by Parents at the March ***, 2016 ARDC, and was this a denial of a FAPE.
- d. During the 2015-2016 and 2016-2017 school years, did Respondent fail to provide Parents with compliant PWN as to why Respondent failed to provide Student with an autism supplement consistent with Student's unique individualized needs, including ABA based services and including ***, and was this a denial of a FAPE.
- e. Whether Respondent failed to provide Parents with PWN during the 2015-2016 and 2016-2017 school years when it failed to notify Parents as to why Respondent was not providing Student with 1:1 special education trained (ABA trained) paraprofessional throughout Student's entire school day, and was this a denial of a FAPE.
- f. During the 2015-2016 school year, did Respondent fail to provide Parents compliant PWN as to why supplementary aids and services as outlined in the October ***, 2015 ARDC/IEP were not provided to Student, and was this a denial of a FAPE.
- g. During the 2015-2016 school year, did Respondent fail to provide Parents with compliant PWN as to the change in use of AT services, and was this a denial of a FAPE.
- h. Whether Respondent failed to report the use of restraints to Parents in writing during the 2015-2016 school year while Student attended ***, and was this a denial of a FAPE.

Pursuant to 34 C.F.R. §300.507, a parent may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. Section 503(a) requires that written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

In the complaint, Petitioner asserted claims for relief arising under Section 504 of the Rehabilitation Act of 1973, the Technology Related Assistance of Individuals With Disabilities Act, and the Americans With Disabilities Act (ADA). Petitioner's claim for relief included a request for an order that Respondent revise its district wide policies, plans and practices. These claims and requests were dismissed for want of jurisdiction on December 16, 2016.

B. Proposed Remedies

Petitioner requested that the hearing officer order the following relief, which was noted in the December 16, 2016 Order:

1. An order finding that Respondent denied Student with a FAPE during the 2015-2016 school year, including the summer of 2016.
2. An order finding that Respondent's March 2016 ARDC/IEP denies Student a FAPE for the 2016-2017 school year, including the summer of 2017.
3. An order that Respondent reimburse Parents for any and all costs related to ABA services, speech and language services, occupational therapy/physical therapy services that Parents had to personally incur due to Respondent's failure to provide Student with a FAPE during the 2015-2016 and 2016-2017 school years.
4. An order that Respondent reimburse Parents for all mileage incurred in their providing Student private ABA services, speech and language services, and occupational therapy/physical therapy services, that they had to personally incur due to Respondent's failure to provide Student a FAPE, including transportation costs and any loss of services or adverse impact on home services for the 2015-2016 and 2016-2017 school years.
5. An order that Respondent reimburse or pay Parents for all costs of Student's attendance at *** (***) for the 2016-2017 school year, including tuition, cost of additional support services, and any co-pay or loss of benefits for use of *** at the school setting that they may incur, and mileage for transportation to and from school.
6. An order that Respondent hire or contract with a licensed board certified behavior analyst (BCBA) and licensed speech and language therapist (SLT) trained in AT, to work with the District's staff to provide direction and guidance to Student's ARDC and all school staff to prepare an IEP for

Student that is designed to meet Student's unique educational needs, or in the alternative pay for Student to continue to receive a program of education from a private source (i.e. ***) as needed and/or some combination thereof, and that Student's IEP will provide: a) peer-reviewed researched programs (i.e. ABA) provided by qualified personnel; b) a means by which the programs can be provided in a regular education environment with differentiated instruction and supplementary aids and supports to help Student successfully learn academically alongside Student's non-disabled peers; c) services to ensure that Student is fully socially included with Student's non-disabled peers; and d) services to ensure that Student is able to utilize AT devices and programs.

7. Order that until Respondent is prepared and ready to comply with paragraph 6 above for Student, that Respondent pay for Student to continue to receive Student's education at ***, and to pay for the cost of all services at same, including tuition, mileage for transportation to and from school, cost of additional support services, and any co-pay or other impact of use of *** for the ABA services, and find that the *** program with the additional services constitutes Student's "stay put" program of services , unless the parties agree otherwise.
8. An order that Respondent provide Student with compensatory education services in an amount equal to the deprivation of education Student has experienced, and order that Respondent pay for Student to continue Student's program of education at *** with the specialized services added to that setting, and including transportation costs to and from the school.
9. Any other relief deemed appropriate by the hearing officer.

III. BURDEN OF PROOF

The IDEA creates a presumption that the school district's decisions made pursuant to the IDEA are appropriate, and the party challenging the decisions bears the burden of proof at all times.¹ Petitioner bears the burden of proof on all issues raised in Petitioner's complaint. The burden of proof in this matter is by preponderance of the evidence.²

IV. FINDINGS OF FACT

Based upon the evidence presented at hearing that pertains to the above-listed issues, this hearing officer makes the following findings of fact and conclusions of law. Citations to the transcript are designated as "Tr." followed by the page number(s). Citations to exhibits are designated as "PE" for Petitioner, "RE" for Respondent, and "JE" for Joint Exhibit, followed by the exhibit number.

2015-2016 School Year

1. Student is *** years old and resides with Student's parents in the District.

¹ *Schaffer ex rel. v. Weast*, 546 U.S. 49 (2005).

² 20 U.S.C. §1415(i).

2. Student transferred into the District on September ***, 2015 from *** for the 2015-2016 school year.³ Prior to moving into the District, Student attended *** (***) where it was determined Student met eligibility criteria for Autism Spectrum Disorder. (ASD).⁴ When Student moved into the District, Student had an IEP from ***.⁵

3. The IEP from *** for the period of 12/***/14 to 12/***/15, provided for the following services:⁶

A. Consultation (Indirect Services to School Personnel and Parents)

Type of Service	Type of Personnel	Frequency and Duration/Per Cycle	Start Date & End Date
Consultation	Speech/Language Pathologist	***	12/***/14 to 12/***/15
Consultation	Autism Specialist	***	12/***/14 to 12/***/15
Consultation	*** Teacher	***	12/***/14 to 12/***/15
Consultation	Occupational Therapist	***	12/***/14 to 12/***/15

B. Special Education and Related Services in General Education Classroom (Direct Services)

Type of Service	Type of Personnel	Frequency and Duration/Per Cycle	Start Date & End Date
Speech/Language	Speech/Language Pathologist	***	12/***/14 to 12/***/15
***	*** Teacher or Paraprofessional	***	12/***/14 to 12/***/15

C. Special Education and Related Services in Other Settings (Direct Service)

Type of Service	Type of Personnel	Frequency and Duration/Per Cycle	Start Date & End Date
Speech/Language	Speech/Language Pathologist	***	12/***/14 to 12/***/15
Specialty Services	*** Teacher or Paraprofessional	***	12/***/14 to 12/***/15
Occupational Therapy	Occupational Therapist	***	12/***/14 to 6/***/15
Summer Speech & Language	Speech/Language Staff(SLP/SLPA)	***	07/***/15 to 8/***/15
Summer ***	*** Teacher or Paraprofessional	***	07/***/15 to 8/***/15
Summer Occupational Therapy	Occupational Therapist	***	07/***/15 to 8/***/15

4. While a *** student at ***, Student received 1:1 support throughout the day for safety, and to modify Student’s program and support Student’s learning.⁷ Because Student was easily distracted Student was

³ JE24 at JE000779.

⁴ JE2 at JE000045.

⁵ JE20.

⁶ JE20 at JE000752.

⁷ JE21 at JE000769.

monitored and prompted back to tasks.⁸ Staff at *** emphasized that without individual support in the classroom, Student would present a considerable safety risk to ***self. It was believed that Student would benefit from a continued integrated classroom with peers, with small groups, and with an extended day program. Recommendations included individualized instruction for academics and consistent consultation with a specialist trained in working with children with autism, and home-based support for parents.⁹ It was noted that Student needed support throughout various times during the day to have meaningful interactions and to expand the repertoire of Student's ***.¹⁰

5. Student's IEP from *** explained that Student needed to continue to increase receptive/***, speech intelligibility, and social communication skills.¹¹ To achieve this Student was to receive *** sessions a week of direct speech therapy for a total of *** minutes, and ***-minute consultation per week.¹²
6. The *** IEP noted that Student needed positive behavioral supports and variable reinforcement, sensory breaks, multi-model communication supports, and frequent reinforcement for desired behaviors.¹³ The IEP included a goal for improving Student's concept knowledge, functional *** skills, and ability to *** *** setting.¹⁴
7. The occupational therapist (OT) at *** recommended that Student receive OT services *** a week with weekly OT consultation to the classroom program.¹⁵ The IEP included direct OT services for *** minutes per week and ***-minute consultation per week.¹⁶
8. The IEP noted that Student needed summer services to prevent significant regression.¹⁷ Student was not able to take advantage of the summer services because ***.¹⁸ Student was able to *** prior to enrolling in the District.¹⁹
9. Student used a *** while at ***.²⁰ Parent gave *** to Respondent.²¹ However, *** said they were not able to ***, and *** did not use it.²²
10. Student demonstrated steady growth while enrolled in the program at ***. Although Student needed reinforcement to remain on task and complete activities that were challenging, Student improved in areas

⁸ JE21 at JE000771.

⁹ PE1 at PE000001041.

¹⁰ PE1 at PE000001045.

¹¹ PE1 at PE000001002.

¹² PE1 at PE000001005.

¹³ PE1 at PE000000998.

¹⁴ PE1 at PE000001003.

¹⁵ PE1 at PE000001057.

¹⁶ PE1 at PE000001005.

¹⁷ PE1 at PE000001017.

¹⁸ Tr. at 768.

¹⁹ Tr. at 722.

²⁰ PE7.

²¹ Tr. at 724.

²² Tr. at 723-725.

such as ***, *** and communication.²³ Student was excited about coming to school.²⁴ Student was enthusiastic.²⁵ Student continued to increase ***, *** and ***.²⁶ Student's speech language pathologist (SLP) at *** emphasized that Student made tremendous developmental gains in both the areas of language and social communication.²⁷ A June ***, 2015 progress report notes that Student made steady progress in all areas of speech and language development.²⁸ However, ***.²⁹

11. Student's IEP at *** notes that in order for Student to make meaningful progress Student needs a *** with individualized instruction.³⁰ If the classroom environment was ***, it seemed to affect Student's ability to ***.³¹ While at ***, Student was described as *** was showing an increased interest in ***.³²
10. While enrolled at ***, Student acclimated to the routines and expectations of the classroom. Student would check Student's schedule and go to the area/activity indicated.³³ Student was able to ***. Student's behaviors of *** decreased in frequency, duration and intensity. Student's *** skills were continuing to develop.³⁴ Student was able to ***.³⁵ Student made steady gains in all areas at ***.³⁶
11. A board-certified behavior analyst (BCBA) behavioral specialist observed Student at *** to summarize the support strategies and response to intervention, identify strengths and challenges, and provide behavioral recommendations to further support current progress. Numerous recommendations were made by this BCBA.³⁷ One of the recommendations was *** where skilled adults provide modeling, coaching to all peers, problem-solving, and opportunities for expansion.³⁸
12. The June ***, 2015 progress report from *** noted that Student was beginning to ***. Student's *** was emerging. Student was sometimes ***. With one-to-one support Student was able to follow classroom routines.³⁹

²³ PE1 at PE000000996.

²⁴ PE1 at PE000000997.

²⁵ PE1 at PE000001049.

²⁶ PE1 at PE000001002.

²⁷ PE1 at JE000001041.

²⁸ PE1 at PE000001095.

²⁹ PE1 at PE000001049.

³⁰ PE1 at PE000001006.

³¹ PE1 at PE000001041.

³² PE1 at PE000001041.

³³ PE1 at PE000001049.

³⁴ PE1 at PE000001050.

³⁵ PE1 at JE000001051.

³⁶ PE1 at PE000001052- PE000001053.

³⁷ PE1 at PE000001072.

³⁸ PE1 at PE000001073.

³⁹ PE1 at PE000001096.

13. Dr. *** became the Executive Director for Special Education in the District in the spring of 2016.⁴⁰ Dr. *** confirmed that when a student with an IEP from ***, the student is entitled to have the District implement the IEP from ***.⁴¹
14. When Student enrolled in the District on September ***, Respondent was aware that the previous school year Student received inclusion support, speech therapy, occupational/physical therapy, and ABA.⁴² Parent stated that when Student was enrolled in the District, she was told that the District does not provide ABA services.⁴³ The District had a ratio of 2500/1 for staffing of a Behavioral Specialist.⁴⁴
15. On September ***, 2015, Student's teacher *** tested Student. Student did not know ***.⁴⁵ During the summer of 2015, Student knew ***.⁴⁶
16. An ARDC meeting was held on September ***, 2015. The September *** ARDC determined that Student was eligible for special education services under the disability of autism. An IEP was put in place. Without conducting any new assessment of Student, the ARDC made changes to Student's IEP by eliminating many services.⁴⁷ The transfer IEP did not include a BCBA/Autism Specialist or Behavior Specialist; did not include a 1:1 adult to assist Student ***; did not include direct OT services and reduced OT consultations services from *** for *** minutes to ***; reduced Student's direct speech therapy from *** a week to *** a week, and consultation services were reduced from *** for *** minutes to ***; and eliminated ESY.⁴⁸
17. The September ***, 2015 ARDC report notes that Student did not need the use of positive behavior support services as part of Student's IEP. The ARDC also determined that Student did not need a higher staff to student ratio as part of Student's IEP.⁴⁹ It provided for *** *** minutes *** times a week.⁵⁰ It was established that Student would spend *** hours in general education, and *** hours in special education per day.⁵¹ Student attended *** at this time.
18. On September ***, 2015, Parent expressed concern to Respondent regarding Student not having individual support in the classroom.⁵²

⁴⁰ Tr. at 84.

⁴¹ Tr. at 88.

⁴² JE26 at JE000794.

⁴³ PE8 at PE001314.

⁴⁴ PE6 at PE001267.

⁴⁵ Tr. at 168, 767.

⁴⁶ Tr. at 769.

⁴⁷ JE1.

⁴⁸ JE1.

⁴⁹ JE1 at JE000010-JE000011.

⁵⁰ JE1 at JE000018.

⁵¹ JE1 at JE000021.

⁵² PE8.

19. Ms. *** did not get a copy of Student's IEP when Student first came to her class.⁵³ She implemented what she could from the *** IEP, however there was a lot she couldn't provide. Student did not have a 1:1 full time aide in the classroom. She did not know what a BCBA was.⁵⁴
20. Ms. *** *****.⁵⁵ When Student ***, Ms. *** would try to have Student *** to calm down.⁵⁶
21. In October of 2015, Parents arranged for Student to have a private speech language evaluation. The evaluation found that Student had *** and a ***. The evaluation noted that Student's *** can have a severe impact on Student's ***, academic development, and ***. It was noted that if Student ***. The evaluation concluded that it was imperative that Student receive skilled speech therapy services. It was recommended that Student receive *** minutes of speech therapy *** times per month.⁵⁷
22. The District performed an OT assessment on October ***, 2015, and concluded that Student would benefit from OT services (1) ***- minute consultative session every *** weeks for a total of *** sessions per grading period.⁵⁸
23. A Full and Individualized Evaluation Report (FIE) was completed by the District on October ***, 2015. This FIE was a reevaluation. The FIE report noted that Student's behavior impedes Student's learning, and the learning of others.⁵⁹ The report also notes that Student exhibits significant emotional, behavioral, or attentional problems. Student's overall academic achievement was in the low average range of others Student's age, and Student's adaptive behavior was commensurate with age expectations.⁶⁰ It was noted that there was evidence of a *** which had an adverse effect on Student's educational performance. It was recommended that Student receive direct speech services to improve ***. The final determination was that Student met the criteria for autism and speech impairment.⁶¹ The FIE report also states that Student needs OT to benefit from Student's education, but did not need AT devices or services.⁶²
24. An ARDC meeting was held on October ***, 2015. Student was determined to be eligible for special education and related services under the categories of autism and speech impairment.⁶³ The ARDC determined that Student did not have a need for ESY or AT. The October *** report notes that Student needs specialized instruction in the areas of ***, autism/***, ***.⁶⁴ The ARDC determined that Student needed services as part of Student's IEP in the areas of ***, positive behavior support strategies, but did not need in-home and community based training as Student did not demonstrate an issue transitioning from school to home. The IEP noted that Student did need specified staff -to- student ratio as part of

⁵³ Tr. at 169.

⁵⁴ Tr. at 171.

⁵⁵ Tr. at 194.

⁵⁶ Tr. at 195.

⁵⁷ PE12.

⁵⁸ JE3 at JE000058.

⁵⁹ JE2 at JE000046.

⁶⁰ JE2 at JE000047.

⁶¹ JE2 at JE000049.

⁶² JE2 at JE000050.

⁶³ JE4 at JE000063.

⁶⁴ JE4 at JE000065.

Student's IEP.⁶⁵ During ***, ***, ***, and ***, Student was to have increased staff support to achieve progress on IEP goals and objectives. The IEP also notes that Student needs communication intervention and ***, but not extended educational programming.⁶⁶ Professional educator and staff support services were determined to be needed.⁶⁷ The IEP states that Student does not require a Behavior Support and Intervention Plan (BSIP).⁶⁸ The report notes that Student does not run in the hallways and follows class rules.⁶⁹ Student was reported as ***, however Student was able to demonstrate the skill ***. Student seemed to ***. Student needed reinforcement to remain on task and complete challenging activities.⁷⁰ The ARDC determined that Student did not exhibit significant behavioral challenges which adversely affect Student's educational performance or the learning of others, and did not need assistive technology.⁷¹

25. The October ***, 2015 IEP states that Student was to receive: *** minutes of occupational therapy-consultative for *** minutes *** every *** weeks; *** minutes of ***/*** services for *** minutes *** per week; *** minutes of speech/language services-consultation *** per *** weeks; speech/language services *** minutes *** times per *** weeks.⁷² During the October *** ARDC meeting, Parent expressed concerns about Student's *** skills, and that there was regression in Student's ability to ***.⁷³ Parent also noted concerns about Student's behavior as Student ***. Parent did not agree with the October *** IEP.⁷⁴
26. The ARDC met again on October ***, 2015. The October ***, 2015 ARDC developed measurable goals and objectives to address Student's needs in the areas of English/Language Arts, Functional Behavior, Social Skills, OT, and Speech and Language. The ARDC report contains annual goals and objectives such as by the end of the second grading period Student will *** in *** out of *** trials with ****% accuracy. The report also contains present levels of academic achievement and functional performance (PLAAFP).⁷⁵
27. The October *** ARDC determined that ESY was not educationally necessary for Student to receive a FAPE,⁷⁶ and that Student did not need extended educational programming as part of Student's IEP.⁷⁷ Respondent concluded that Student did not need a BSIP.⁷⁸
28. The October ***, 2015 IEP provided for the following schedule of services:⁷⁹

⁶⁵ JE4 at JE00076.

⁶⁶ JE4 at JE00077.

⁶⁷ JE4 at JE00078.

⁶⁸ JE4 at JE00080.

⁶⁹ JE4 at JE00064.

⁷⁰ JE4 at JE00067.

⁷¹ JE4 at JE00074.

⁷² JE4 at JE00081-JE00083.

⁷³ JE4 at JE00088.

⁷⁴ JE4 at JE00089.

⁷⁵ JE5.

⁷⁶ PE16 at PE001403.

⁷⁷ PE16 at PE001485.

⁷⁸ PE16 at PE001440.

⁷⁹ JE5.

Subject	Duration and Frequency	Program Area	Location
Occupational Therapy-Consultative	*** minutes *** per *** weeks	Occupational Therapy	General Education
Speech Language Therapy-Consultation	*** minutes *** per *** weeks	Speech Therapy	General Education
Speech Language Therapy-Services	*** minutes *** per *** weeks	Speech Therapy	Special Education
Social Skills/ELAR/ Instructional Services	*** minutes *** per week	Inclusion	General Education
Social Skills/ELAR/ Instructional Services	*** minutes *** per week	Inclusion	General Education
Social Skills/ELAR/ Instructional Services	*** minutes *** per week	Inclusion	General Education

29. The ARDC determined that Student's skills were within age/grade expectations.⁸⁰ It was also determined that Student's overall *** development appeared to be age appropriate.⁸¹ This IEP report notes that Student was to receive specialized instruction in the areas of ***. The accommodation of extra time was provided. The accommodation of allowing Student to utilize sensory strategies on an as needed basis was also provided.⁸² The ARDC determined that Student did not exhibit significant behavioral challenges which adversely affected Student's educational performance or the learning of others.⁸³ The ARDC once again determined that Student needs *** in *** and social skills, but did not need positive behavior support strategies.⁸⁴ Parent requested in home training evaluation.⁸⁵ The ARDC determined that Student did not need parent/family training services as part of Student's IEP. It was also determined that the teacher and paraprofessional would have access to support personnel and were to document support activities.⁸⁶ Parent expressed concerns regarding Student's regression and behavior⁸⁷

30. Although the ARDC ended in disagreement, the October ***, 2015 IEP was implemented by Respondent.⁸⁸ After the ARDC ended in disagreement on October ***, Student *** ***.⁸⁹

⁸⁰ JE5 at JE000112.

⁸¹ JE5 at JE000113.

⁸² JE5 at JE000115.

⁸³ JE5 at JE000122.

⁸⁴ JE5 at JE000123-JE000125.

⁸⁵ JE5 at JE000136.

⁸⁶ JE5 at JE000126.

⁸⁷ JE5 at JE000110, JE000136.

⁸⁸ Tr. at 370-373.

⁸⁹ JE14.

31. Ms. *** did not remember which IEP was in effect after the October *** ARDC meeting.⁹⁰ She did not know what a progress report for special education was. She had never seen or helped fill out a special education progress report.⁹¹ She did not track Student's progress towards goals. She did keep notes to help with progress reports, which are not special education progress reports.⁹²
32. Ms. *** could not say how many times Student ***.⁹³ ***.⁹⁴ She did not keep records of Student's behavior.⁹⁵
33. While at ***, Student's support in the classroom included ***.⁹⁶ It was unknown if *** was a trained special education paraprofessional.⁹⁷ The general education paraprofessionals receive professional development, but the training is not geared for special education.⁹⁸ There were general education aides in the classroom, but they weren't there specifically for Student.⁹⁹ The OT gave Student *** to help keep Student calm.¹⁰⁰
34. When Parent picked Student up from school on October ***, 2015, ***, ***.¹⁰¹ Ms. *** said Student was fine.¹⁰² Student ***, ***, ***.¹⁰³ ***.¹⁰⁴ Respondent did not respond when Parent brought the incident up in the ARDC meeting *** days later.¹⁰⁵ From this date until Student ***, Student was ***.¹⁰⁶
35. On November ***, 2015, Respondent sent Parent a letter informing her that Student had been *** on October ***, 2015. Parent was informed that ***. The desired outcome of *** was that the targeted behavior be corrected before resulting in more severe consequences.¹⁰⁷ It is Respondent's practice to ***.¹⁰⁸
36. On November ***, 2015 Respondent notified Parents that Student had *** tardies, and that the first step towards addressing excessive tardies is parent notification.¹⁰⁹ Parent had difficulty getting Student to go to school while Student was enrolled at ***.¹¹⁰

⁹⁰ Tr. at 178-179.

⁹¹ Tr. at 179-180.

⁹² Tr. at 183.

⁹³ Tr. at 241-242.

⁹⁴ Tr. at 242-243.

⁹⁵ Tr. at 242-243.

⁹⁶ Tr. at 120.

⁹⁷ Tr. at 120.

⁹⁸ Tr. at 121.

⁹⁹ Tr. at 185-186.

¹⁰⁰ Tr. at 239-240.

¹⁰¹ Tr. at 728.

¹⁰² Tr. at 729.

¹⁰³ Tr. at 729.

¹⁰⁴ Tr. at 729.

¹⁰⁵ Tr. at 730-731.

¹⁰⁶ Tr. at 731-732.

¹⁰⁷ PE8 at PE001309.

¹⁰⁸ Tr. at 73.

¹⁰⁹ PE8 at PE001313.

¹¹⁰ Tr. at 711.

37. Student attended *** for the period of September ***, 2015 through November ***, 2015. On November ***, 2015 Student transferred to ***, which is also in the District.¹¹¹
38. On November ***, 2016, Parent met with the principal at ***.¹¹² The principal told Parent that Respondent would not provide ABA therapy and that Petitioner would not be allowed to bring a third-party therapist into the school to provide services.¹¹³
39. Ms. *** was the special education resource inclusion teacher at *** during the 2015-2016 school year.¹¹⁴ She was Student's case manager for special education paperwork.¹¹⁵ She believes it is Respondent's practice that if an IEP is in disagreement it still goes into place.¹¹⁶
40. In November, there was an incident *** involving Student. Ms. *** was called to assist.¹¹⁷ Student was ***, ***. She believes Student was ***.¹¹⁸ Ms. *** does not believe she restrained Student.¹¹⁹
41. There were instances when the *** (***) teachers would give Student *** instead of having Student participate in ***.¹²⁰ Ms. *** thereafter spoke with the teachers about inclusion.¹²¹
42. Ms. *** did not keep track of how many times Student *****.¹²² Although Student had some behavioral issues at ***, a FBA was not completed for Student, and Ms. *** did not ask for one.¹²³
43. *** was Student's teacher when Student attended ***.¹²⁴ When Student *** she would redirect Student.¹²⁵ Sometimes Student would ***. She believed Student was frustrated because of ***.¹²⁶ If redirecting did not work, she would have an assistant ***.¹²⁷ In the beginning, the behaviors were more frequent but became less frequent as months went on.¹²⁸ Sometimes Student would ***.¹²⁹

¹¹¹ JE24 at JE000779.

¹¹² PE9 at PE001346.

¹¹³ Tr. at 1399-1400.

¹¹⁴ Tr. at 366.

¹¹⁵ Tr. at 366.

¹¹⁶ Tr. at 371.

¹¹⁷ Tr. at 407.

¹¹⁸ Tr. at 409.

¹¹⁹ Tr. at 410.

¹²⁰ Tr. at 421-422.

¹²¹ Tr. at 422.

¹²² Tr. at 436.

¹²³ Tr. at 385.

¹²⁴ Tr. at 805.

¹²⁵ Tr. at 811.

¹²⁶ Tr. at 812.

¹²⁷ Tr. at 813.

¹²⁸ Tr. at 813.

¹²⁹ Tr. at 815.

44. Ms. *** did not believe Student needed a one on one aide all of the time in her classroom. Student could do the same things as everyone else and follow directions. It was when there was a change in routines or something was missing that Student ***.¹³⁰ ***.¹³¹
45. Ms. *** was an instructional assistant at ***.¹³² Ms. *** worked with Student while Student was in Ms. ***'s class.¹³³ She summarized Student's behaviors in a journal.¹³⁴ She did not take the notes in order to track progress on Student's IEP goals.¹³⁵ Although it would have been helpful for all ARDC members to have her notes, the notes were not provided to Parents.¹³⁶ She does not know how many times she gave Student redirections or prompts.¹³⁷
46. Ms. *** knows of *** when Student ***.¹³⁸ A ***.¹³⁹ Student would *** during which Student would ***.¹⁴⁰ Student would ***.¹⁴¹ One time Student ***.¹⁴² When Student was ***, she would step back because she was not certified to touch Student.¹⁴³ Student tried to ***.¹⁴⁴ Ms. *** did not see staff restrain Student.¹⁴⁵ A behavior specialist never came to the classroom to work with Student.¹⁴⁶
47. When Ms. *** started working with Student in November Student had trouble communicating with other students. By March students were ***.¹⁴⁷ Student was also doing better with transitions.¹⁴⁸ She was never told how many hours to spend with Student per Student's IEP. She was given a schedule to go by.¹⁴⁹
48. An ARDC meeting was held on February ***, 2016. Student was attending ***. The ARDC determined that Student was eligible for special education and related services under the disability categories of autism and speech impairment.¹⁵⁰ The ARDC determined that Student was not exhibiting significant behavioral challenges which adversely affect Student's educational performance.¹⁵¹ It was determined that Student needed AT to receive a FAPE and that Student would have access to ***.¹⁵²

¹³⁰ Tr. at 852.

¹³¹ Tr. at 853.

¹³² Tr. at 999-1000.

¹³³ Tr. at 1003.

¹³⁴ Tr. at 1007; JE18.

¹³⁵ Tr. at 1086-1087.

¹³⁶ Tr. at 445-446.

¹³⁷ Tr. at 1075.

¹³⁸ Tr. at 1021.

¹³⁹ Tr. at 1027.

¹⁴⁰ Tr. at 1029.

¹⁴¹ Tr. at 1053.

¹⁴² Tr. at 1053.

¹⁴³ Tr. at 1053-1054.

¹⁴⁴ Tr. at 1055.

¹⁴⁵ Tr. at 1054-1055.

¹⁴⁶ Tr. at 1089.

¹⁴⁷ Tr. at 1046-1047.

¹⁴⁸ Tr. at 1062.

¹⁴⁹ Tr. at 1094-1095.

¹⁵⁰ JE9.

¹⁵¹ JE9 at JE000234.

¹⁵² JE9 at JE000234.

49. Respondent completed an In Home/Parent Training evaluation in February of 2016. Parent training was recommended for *** minutes for the *** weeks grading period of the 2015-2016 school year. Parents did not contact Respondent in response to the offer and schedule the training.¹⁵³
50. An ARDC meeting was held on March ***, 2016.¹⁵⁴ Parent expressed concerns about Student's regression in writing and academics. Respondent noted that Student had shown growth at ***.¹⁵⁵ The ARDC determined that Student was eligible for special education services under the categories of autism and speech impairment.¹⁵⁶ Parent disagreed with Respondent not providing additional speech, special education, OT and ESY services. Parent was also not in agreement with the AT evaluation.¹⁵⁷
51. Parent communicated with the District's occupational therapist (OT) regarding *** such as **. The OT did not think these services were part of an educational OT.¹⁵⁸
52. Excerpts from Respondent's daily notes showed that Student exhibited the following behaviors during the 2015-2016 school year:¹⁵⁹
- ***
 ***.¹⁶⁰
 ***.¹⁶¹
 ***.¹⁶²

53. Student's behavior and academic growth deteriorated while Student was a student at the District during the 2015-2016 school year. Parent notified the school regarding Student's regression.¹⁶³ Student exhibited behavior regression. Additionally, Student was not making progress academically.¹⁶⁴ Parent listed some of the areas of Student's regression which included the following: ***.¹⁶⁵
54. When Student attended ***, Student ***.¹⁶⁶
 Respondent did not call a behavior specialist because Respondent believed Student's behaviors could be handled at a campus level.¹⁶⁷

¹⁵³ JE11 at JE000283.

¹⁵⁴ JE7.

¹⁵⁵ JE7 at JE000153.

¹⁵⁶ JE7 at JE000154.

¹⁵⁷ JE7 at JE000178.

¹⁵⁸ Tr. at 1387.

¹⁵⁹ JE18; RE7; PE46.

¹⁶⁰ JE18 at JE000704.

¹⁶¹ JE18 at JE000711.

¹⁶² JE18 at JE000721.

¹⁶³ PE8 at PE001314.

¹⁶⁴ PE18.

¹⁶⁵ PE9 at PE001347.

¹⁶⁶ Tr. at 739.

¹⁶⁷ Tr. at 454.

February ***, 2016 IEP Developed at ***

55. The February 2016 IEP provided for the following schedule of services:¹⁶⁸

Subject	Duration and Frequency	Program Area	Location
Occupational Therapy-Consultation	*** minutes *** per *** weeks	Occupational Therapy	General Education
Parent Training-Direct (Spring 2016)	*** minutes *** per *** weeks	Direct	Special Education
Assistive Technology-AT Equipment	*** minutes *** per day	Assistive Technology	Flexible locations on campus
Speech Language Therapy-Consultative	*** minutes *** per *** weeks	Speech Therapy	General Education
Speech/Language Services	*** minutes *** per *** weeks	Speech Therapy	Special Education
Social Skills/ELAR/Instructional Services	*** minutes *** per week	Inclusion	General Education
Social Skills/ELAR/Instructional Services	*** minutes *** per week	Inclusion	General Education
Social Skills/ELAR/Instructional Services	*** minutes *** per week	Inclusion	General Education

56. A result of the February ARDC meeting was that Respondent refused to provide additional speech, OT, and ESY.¹⁶⁹ Respondent conducted an in-home needs assessment in February of 2016. Teachers reported that Student engages in *** behaviors intermittently and *** behavior during transitions.¹⁷⁰

57. *** is an occupational therapist with the District. She is charged with evaluating, providing treatment, writing treatment plans, and then dismissing children when they no longer need services.¹⁷¹ She evaluated Student in August of 2016. Ms. *** supervised the certified OT assistant that provided services to Student

¹⁶⁸ JE9 at JE000241-JE000242.

¹⁶⁹ Tr. at 868.

¹⁷⁰ JE8.

¹⁷¹ Tr. at 944-945.

when Student was at ***.¹⁷² Ms. *** did not ask Parents for permission to speak with Student's private OT providers.¹⁷³ She did not evaluate if Student could ***.¹⁷⁴

58. At the March ***, 2016 ARDC meeting, Parent notified Respondent that they were providing private services for Student.¹⁷⁵ On April ***, 2106, Parent notified Respondent that they were considering private placement.¹⁷⁶ On June ***, 2016, Parent notified Respondent that Student was still receiving private services and they intended to seek reimbursement.¹⁷⁷
59. An internal audit of the District from March of 2016 notes that Respondent's ratio of behavior specialists was 2500 to 1, the ratio of occupational therapists was 40 to 1, and the ratio of speech therapists was 220 to 1.¹⁷⁸ Respondent did not employ a single BCBA during the 2015-2016 school year.¹⁷⁹ For the 2016-2017 school year, Respondent could not verify if any of the District's six behavior specialists had completed training as BCBA's. A behavior specialist is not a BCBA.¹⁸⁰
60. Parents obtained private services for Student, after which Student stopped regressing and began to make progress.¹⁸¹ The private services included ABA therapy *** hours per week, speech language services *** hours per week, and *** hours of OT each week.¹⁸²
61. A speech therapy evaluation was completed on October ***, 2015 by *** which was a private service obtained by Parents. The evaluation concluded that Student will be seen for skilled therapy services after the referring MD signed off on the plan of care and the insurance authorization is received.¹⁸³ Student received physical therapy (PT) in 2016 from ***, and speech language therapy in 2016 and 2017 from the same provider.¹⁸⁴
62. During the time Student was enrolled in the District, Student was absent *** full days. Attendance logs from *** for the 2015-2016 school year indicate that Student was tardy *** times and was checked out of school early *** times.¹⁸⁵ Student was withdrawn from the District on May ***, 2016.¹⁸⁶
63. Parent met with Executive Director for Special Education (SPED) on April ***, 2016.¹⁸⁷ Parent asked for ESY services. Parent was told that Student was performing above the need for ESY.¹⁸⁸

¹⁷² Tr. at 945-946.

¹⁷³ Tr. at 972-973.

¹⁷⁴ Tr. at 973.

¹⁷⁵ PE8 at PE8001314.

¹⁷⁶ PE8 at PE8001314.

¹⁷⁷ PE8 at PE8001319.

¹⁷⁸ PE6.

¹⁷⁹ Tr. at 93.

¹⁸⁰ Tr. at 92-93.

¹⁸¹ Tr. at 568.

¹⁸² PE8 at PE001314.

¹⁸³ PE12.

¹⁸⁴ PE24.

¹⁸⁵ JE28 at JE000891.

¹⁸⁶ JE11 at JE000279.

¹⁸⁷ PE14.

¹⁸⁸ Tr. at 110.

64. In January of 2016 Parents obtained a psychological evaluation from Dr. ***. Dr. *** has been a licensed clinical psychologist since 1997.¹⁸⁹ He has a one hundred percent assessment practice to determine if children have various disabilities.¹⁹⁰
65. Dr. *** used the Behavioral Assessment System For Children (BASC) to assess Student on January *** and ***, 2016.¹⁹¹ Dr. *** concluded that Student's intellectual functioning falls within the average range, overall. Dr. *** further concluded that Student presents with symptoms of Autism Spectrum Disorder (ASD). Dr. *** determined that Student would benefit from ABA therapy to improve Student's communication skills, social and coping skills, and general adaptive functioning. He also recommended speech therapy for Student.¹⁹²
66. Dr. *** typically recommends ABA treatment for children when he is giving a diagnosis of autism.¹⁹³ He bases this recommendation on relevant medical literature.¹⁹⁴ He believes that for children with a diagnosis of autism, ABA is the most effective form of treatment to intervention.¹⁹⁵ When Dr. *** recommends ABA, he does not mean some strategies in ABA that can be implemented by a teacher. He means that the provider is someone who has received appropriate training to provide ABA services, such as a BCBA.¹⁹⁶
67. Dr. *** believes that quality ABA therapy starts with the ABA therapist doing an assessment of the child's functional behaviors as well as some maladaptive behaviors. A plan is created and the child receives fairly intensive therapy that is often two to four hours up to five days a week in which the child is working one-on-one with an ABA therapist who is working on that child acquiring new skills, and then interspersed with that opportunities to socialize with other children so that the child is able to work on social skills. This is the expectation of what the child would benefit from receiving.¹⁹⁷
68. In February of 2016, Student began receiving private ABA therapy and private speech therapy. Student would ***.¹⁹⁸ Respondent would not allow the private ABA services to be provided on school property.¹⁹⁹
69. *** is a Board -Certified Behavior Analyst (BCBA).²⁰⁰ Ms. *** owns ***.²⁰¹ All the *** they serve have a diagnosis of autism.²⁰² ***.²⁰³

¹⁸⁹ PE13.

¹⁹⁰ Tr. at 1421.

¹⁹¹ PE13; Tr. at 1425.

¹⁹² Tr. at 1457-1458; PE13.

¹⁹³ Tr. at 1421.

¹⁹⁴ Tr. at 1462-1463, 1477, 1480.

¹⁹⁵ Tr. at 1462.

¹⁹⁶ Tr. at 1465-1466, 1478-1479.

¹⁹⁷ Tr. at 1446.

¹⁹⁸ Tr. at 743.

¹⁹⁹ Tr. at 748-749.

²⁰⁰ Tr. at 303.

²⁰¹ Tr. at 305.

²⁰² Tr. at 306.

²⁰³ Tr. at 306; PE30.

70. Student was assessed by Ms. *** on February ***, 2016.²⁰⁴ She conducted a FBA in the initial intake.²⁰⁵ Ms. *** evaluated Student and created a report.²⁰⁶ Student was reassessed on July ***, 2016.²⁰⁷ Short term and long-term goals were established. The treatment recommendation noted that Student demonstrates behaviors that can cause Student harm, and recommended that Student receive *** hours of ABA therapy per week.²⁰⁸
71. On July ***, 2016 Ms. *** reevaluated Student and completed another report.²⁰⁹ Respondent did not contact Ms. *** prior to the due process hearing.²¹⁰ Although she has attended IEP meetings for other ***, she was never invited to one for Student.²¹¹ Ms. *** has provided services at other schools.²¹²
72. ABA uses principals and tactics that are known as behavior and uses them systematically to modify socially significant behavior.²¹³ There are two types of treatment plans under the ABA, the focus based model and the comprehensive model.²¹⁴ The comprehensive model provides more intensive services to develop skills across several domains, as well as reduce maladaptive behavior.²¹⁵ Ms. *** originally recommended focus based for Student, but increased the intensity after communicating with Parents regarding Student's behavior.²¹⁶ It was recommended that Student receive *** hours of service from a registered behavior technician (RBT), with *** hours of supervision by Ms. ***.²¹⁷ The plan was to provide these services and then reduce them, which is common practice.²¹⁸
73. On April *** and ***, 2016, the District requested that Parents attend a May *** ARDC meeting so that an FIE of Student could be initiated. Parents initially refused.²¹⁹ The District continued to reach out to Parents in July.²²⁰

2016-2017 School Year

74. A FIE evaluation was initiated in August of 2016.²²¹ In September the District notified Parent that additional information was needed to complete the evaluation.²²² The District requested consent to

²⁰⁴ PE26.

²⁰⁵ Tr. at 311.

²⁰⁶ Tr. at 307.

²⁰⁷ PE30.

²⁰⁸ PE30 at PE002147.

²⁰⁹ PE30.

²¹⁰ Tr. at 309.

²¹¹ Tr. at 328.

²¹² Tr. at 357.

²¹³ Tr. at 304.

²¹⁴ Tr. at 316.

²¹⁵ Tr. at 316-317.

²¹⁶ Tr. at 317, 335.

²¹⁷ Tr. at 324-325.

²¹⁸ Tr. at 326.

²¹⁹ JE28 at JE000807-JE000808.

²²⁰ JE28 at JE000809-JE000816.

²²¹ JE28.

²²² JE28 at JE000845.

observe Student in Student's classroom setting at ***.²²³ Consent was provided on October ***, 2016.²²⁴ The District conducted the re-evaluation for cognitive, achievement, speech and OT. The parties accepted the previous autism evaluation dated May ***, 2015, and did not feel a new autism evaluation was warranted.²²⁵

75. The FIE was completed on November ***, 2016.²²⁶ It was determined that Student displayed a *** *** and *** and was eligible for speech and language services. It was recommended that Student receive direct speech services to improve *** and *** services, and that placement be within a peer group to encourage ***.²²⁷ There was evidence of an adverse effect on educational performance resulting from the ***.²²⁸ It was also determined that Student needed OT to benefit from Student's education. Student was anticipated to advance without AT devices or services.²²⁹ The reported scores in speech/language, Adaptive, Cognitive and Achievement showed varied scores from low to average. Adaptive behavior data obtained from Parent and previous teacher indicate Student is functioning below age level expectations. The FIE noted that Student had shown good progress while Student was enrolled at the District. The report notes that based on information during testing, Student's *** and *** were commensurate with Student's age and developmental level. Attentional difficulties were observed in various settings and reported by multiple sources. The FIE report states that according to the data compiled in the speech and language assessment, Student met criteria as a student with a speech and language impairment. Deficits noted in communication and data indicate that Student may be dealing with problems associated with ***.²³⁰ It was the professional judgment of the speech-language pathologist/multidisciplinary team that Student exhibited a ***, and that there are *** factors that directly affect Student's ability to make progress in the general/special/** education curriculum.²³¹ The FIE confirmed that Student displayed the characteristics of a student with an ASD.²³² It was determined that Student's *** and *** are commensurate with Student's age and developmental deficits, and that Student did not demonstrate an eligibility or educational need for additional support or instruction with *** or ***.²³³ It was noted that Student's behavior did not impede Student's learning or the learning of others.²³⁴

January ***, 2017 ARDC Report

76. The ARDC met on January ***, 2017.²³⁵ The last IEP recommended by Respondent is the January IEP.²³⁶ Student was determined eligible for services under the categories of autism and speech

²²³ JE28 at JE000848-JE000850.

²²⁴ JE28 at JE000851-853.

²²⁵ JE28 at JE000875.

²²⁶ JE11.

²²⁷ JE11 at JE000288.

²²⁸ JE11 at JE000298.

²²⁹ JE11 at JE000300.

²³⁰ JE28 at JE000893.

²³¹ JE28 at JE000909.

²³² JE29 at JE000908.

²³³ JE28 at JE000910.

²³⁴ JE11 at JE000301.

²³⁵ RE1.

²³⁶ Tr. at 476.

impairment.²³⁷ The ARDC determined that Student did not have a need for ESY.²³⁸ The ARDC also determined that Student did not exhibit significant behavior challenges which adversely affected Student’s educational performance or the learning of others, and did not need AT to receive a FAPE.²³⁹ The ARDC further determined that Student did not need the use of positive behavioral support strategies as part of Student’s IEP.²⁴⁰ When considering the use of social skills supports and strategies, the ARDC determined that Student needed services in *** and ***.²⁴¹ The ARDC further determined that Student needed in-home and community-based training or viable alternatives to assist with acquisition of social/behavioral skills as part of Student’s IEP. The ARDC concluded that Student needed specified staff-to -student ratio as part of Student’s IEP. The report notes that Student has been transitioning successfully, and therefore did not need the use of daily schedules reflecting minimal unstructured time and active engagement in learning activities.²⁴² The ARDC determined Student did not need extended educational programming as part of Student’s IEP.²⁴³ The ARDC considered teaching strategies based on peer reviewed research-based practices for students with ASD, and determined that Student does need teaching strategies specified in Student’s IEP with services in ***, *** and ***.²⁴⁴ The ARDC determined that parent/family training services were needed as part of Student’s IEP, as well as professional educator and staff support.²⁴⁵ The January ARDC report states that Student does not require a BSIP.²⁴⁶

77. The January *** report lists the following schedule of instructional and related services:²⁴⁷

Related Services	Duration	Frequency	Location
Parent training-Direct	*** minutes	*** per *** weeks	Special Education
Occupational Therapy-Consultative	*** minutes	*** per *** weeks	General Education
***	*** minutes	*** per week	General Education
***	*** minutes	*** per week	General Education
Speech Language Services	*** minutes	*** per *** weeks	Special Education
***	*** minutes	*** per week	General Education

78. The January ***, 2017 ARDC developed measurable goals and objectives to address Student’s needs. The ARDC report contains annual goals and objectives and PLA AFPs. The method for coordination between general and special education was that the general education teachers were to notify the special

²³⁷ RE1 RE002411.
²³⁸ RE1 at RE002416.
²³⁹ RE1 at RE002421.
²⁴⁰ RE1 at RE002422.
²⁴¹ RE1 at RE002422.
²⁴² RE1 at RE002423.
²⁴³ RE1 at RE2424.
²⁴⁴ RE1 at RE002424.
²⁴⁵ RE1 at RE002425.
²⁴⁶ RE1 at RE002427.
²⁴⁷ RE1 at RE002429-2431.

education teacher of the student's failure to meet mastery level for passing standards for each grading period.²⁴⁸

79. On March ***, 2017, Parents had Student evaluated by ***, a speech language pathologist (SLP).²⁴⁹ She found that Student had a *** that affected Student's *** score with primary delays in the area of *** and age-appropriate *** skills, and had a moderate to severe *** ***.²⁵⁰ Student's *** was *** standard deviations below normal.²⁵¹ Student's *** was normal.²⁵² Student's *** skills, such as *** and *** was in the below-average range.²⁵³ It was recommended that Student receive speech therapy services *** times per week for *** minutes, plus *** minutes of weekly classroom based therapy for a total of *** minutes per week.²⁵⁴ It was further recommended that Student receive indirect services by way of a speech pathologist working with Student's teachers and aides.²⁵⁵
80. Student was given the *** to measure Student's *** skills.²⁵⁶ The assessment revealed Student had a ***.²⁵⁷
81. Ms. *** stated that Student presented more with characteristics of *** and not characteristics that would be exclusively attributed to something such as ***.²⁵⁸ This is significant as they are two separate disorders that need to be treated differently in terms of speech therapy.²⁵⁹
82. Ms. *** recommended AT for Student's speech.²⁶⁰ Student's ***.²⁶¹ Ms. *** believes Student has significantly improved since Respondent tested Student in October of 2016.²⁶²
83. Dr. *** is a board-certified behavior analyst doctor (BCBA-D).²⁶³ ABA is using the science of behaviorism to change socially important behaviors.²⁶⁴ In ABA the provider chooses and defines specific behaviors that we want to change, then changes the environment to elicit those behaviors or decrease those behaviors.²⁶⁵ According to Dr. ***, the application of these techniques by classroom teachers is not the same as ABA services.²⁶⁶ Data collection and changes in the program based on the data is an important aspect of the ABA.²⁶⁷

²⁴⁸ RE1.

²⁴⁹ PE39; PE40.

²⁵⁰ Tr. at 673.

²⁵¹ Tr. at 674.

²⁵² Tr. at 674.

²⁵³ Tr. at 675.

²⁵⁴ Tr. at 688-689.

²⁵⁵ Tr. at 689.

²⁵⁶ Tr. at 678-679.

²⁵⁷ Tr. at 679.

²⁵⁸ Tr. at 683.

²⁵⁹ Tr. at 683-684.

²⁶⁰ Tr. at 686-687.

²⁶¹ Tr. at 687.

²⁶² Tr. at 691.

²⁶³ Tr. at 536.

²⁶⁴ Tr. at 539.

²⁶⁵ Tr. at 540.

²⁶⁶ Tr. at 540.

²⁶⁷ Tr. at 540.

84. ***. It is a small part of what you can do as an ABA.²⁶⁸
85. There is a consensus in the scientific community that ABA therapy is effective for kids with autism.²⁶⁹ It helps them increase behaviors of communication, language skills, and social skills.²⁷⁰ When conducting ABA therapy, the behavior is specifically defined so that everybody who works with the child knows what to look for.²⁷¹ When trying to decrease a behavior they look at the function of the behavior.²⁷² If the behavior is something you want to increase, the provider analyzes the environment to look for cues for behavior and then figures out how to get the child to respond to the natural environment.²⁷³ Data is collected on an almost daily basis, and graphed to see trends in the behavior.²⁷⁴ Using general behavioral principles is not the same as ABA.²⁷⁵ Not identifying specific behaviors or counting how frequently the behaviors occur is inconsistent with ABA.²⁷⁶
86. While various evidence based practices can be used outside of the ABA context, they are not part of the ABA program.²⁷⁷ The random use of a variety of evidence -based techniques is not the same as an ABA program because behavior is not being monitored and outcomes are not being measured. Changers are not necessarily being made on observation.²⁷⁸ You need data on the frequency, duration, and intensity of the behaviors.²⁷⁹ Not every behavior is measured by just frequency or duration.²⁸⁰ Training for ABA needs to be intensive, hands on, and needs to have follow up.²⁸¹
87. It is Dr. ***'s opinion that when Student was enrolled in the District the responses of the teachers to Student would not work because Student would not be able to ***.²⁸² Student's *** is not age appropriate.²⁸³ Student had a hard time ***.²⁸⁴ Student's teachers in the District noted Student wasn't following directions.²⁸⁵
88. Dr. *** believes Student is currently very successful. Student is not currently needing a lot of intervention from Student's therapist. She believes the difference between *** and Respondent is the implementation

²⁶⁸ Tr. at 545.

²⁶⁹ Tr. at 541.

²⁷⁰ Tr. at 541.

²⁷¹ Tr. at 542.

²⁷² Tr. at 543.

²⁷³ Tr. at 543.

²⁷⁴ Tr. at 544.

²⁷⁵ Tr. at 547.

²⁷⁶ Tr. at 553.

²⁷⁷ Tr. at 593-600.

²⁷⁸ Tr. at 629-630.

²⁷⁹ Tr. at 631.

²⁸⁰ Tr. at 637.

²⁸¹ Tr. at 559.

²⁸² Tr. at 575.

²⁸³ Tr. at 575.

²⁸⁴ Tr. at 578.

²⁸⁵ Tr. at 579.

of ABA therapies at ***.²⁸⁶ According to Dr. ***, if a behavior therapist does her job well, then the child will eventually not need her anymore.²⁸⁷

89. Dr. *** notes that the behaviors exhibited by Student at the District were continuing but no FBA was conducted.²⁸⁸ She noted that there was no evidence of meaningful progress monitoring of Student's IEP by Respondent.²⁸⁹ She thinks this was significant because if we don't understand what progress is being made, we need better evidence.²⁹⁰ Dr. *** noted that Student's IEPs at the District were remarkably similar.²⁹¹ The last IEP offered by Respondent is similar to what was offered previously and the previous IEPs did not work.²⁹² Dr. *** believes moving Student back to the District would be detrimental to Student.²⁹³
90. Although it had not yet been implemented, the February 2017 plan compiled by Ms. *** is an appropriate ABA plan according to Dr. ***.²⁹⁴ That plan notes that Student presents with high risk behaviors that impedes with learning and puts Student's safety in harm's way.²⁹⁵ The plan also notes that Student is able to fully participate in ABA sessions.²⁹⁶
91. Respondent's expert *** reviewed Student's records and did not believe Student needed ABA therapy to benefit from Student's education.²⁹⁷ Mr. *** is a BCBA. He has a Master of Education and a Master of Arts in Clinical Psychology.²⁹⁸

92. For the 2016-2017 school year, Parents placed Student at *** (***), a private school, and seek reimbursement from the District under the IDEA for the cost of tuition at ***, as well as transportation costs to and from the school. While at *** during the 2016-2017 school year, Student made positive academic and non-academic progress. *** provided some of the supports that Student needed. One of the reasons Parents placed Student at *** was because that school allowed Student's ABA therapist to be with Student all day.²⁹⁹
93. Parents provided intense ABA supports that was taught throughout most of the day by Student's therapist, *** Ms. ***, a RBT. Student started with 1:1 ABA support throughout most of Student's school day.

²⁸⁶ Tr. at 568.

²⁸⁷ Tr. at 570.

²⁸⁸ Tr. at 554.

²⁸⁹ Tr. at 569.

²⁹⁰ Tr. at 569.

²⁹¹ Tr. at 569.

²⁹² Tr. at 650-651.

²⁹³ Tr. at 570-571.

²⁹⁴ PE31; Tr.at 632.

²⁹⁵ PE31 at PE002175.

²⁹⁶ PE31 at PE002178.

²⁹⁷ Tr. at 1305-1307.

²⁹⁸ RE3.

²⁹⁹ Tr. at 748.

Contingent upon Student's success, some 1:1 ABA support was to have been faded and supervision was to occur less frequently.³⁰⁰

94. Ms. *** has reduced her time with Student to *** hours *** days a week because Student is making progress.³⁰¹ At the beginning of the school year she ***. Now she *** to help Student gain independence.³⁰²
95. At the beginning of the school year, Ms. *** used antecedent strategies in order to prevent elopement.³⁰³ That is she would prepare Student for what was going to happen.³⁰⁴ For aggressions she would verbally prompt Student.³⁰⁵ Student has made progress with the ***.³⁰⁶ Ms. *** believes that interventions must be consistent and that consistency is the key for Student to make progress.³⁰⁷ Student's teacher is aware of the strategies Ms. *** is working on.³⁰⁸
96. Ms. *** uses differential replacement for other behaviors (DRO).³⁰⁹ This involves positive reinforcement for good behaviors.³¹⁰ At the beginning of the school year she also used *** to increase time spent doing a good behavior.³¹¹ She uses verbal and model prompting with Student.³¹²
97. She uses *** when Student is learning a new behavior.³¹³ This involves taking a baseline and then determining what the appropriate goal is.³¹⁴ Ms. *** tracks behavior while working with Student.³¹⁵
98. Ms. *** is the principal at ***.³¹⁶ *** is an accredited school and follows TEKS.³¹⁷ *** creates IEPs.³¹⁸ ***.³¹⁹
99. The principal has observed Student at *** and believes Student is doing very well.³²⁰ Student does not have any discipline issues and is doing well socially.³²¹ Student has not had excessive absences but has been tardy a few times.³²²

³⁰⁰ PE42 at PE002314.

³⁰¹ Tr. at 257-258.

³⁰² Tr. at 293.

³⁰³ Tr. at 254-255.

³⁰⁴ Tr. at 255-256.

³⁰⁵ Tr. at 256.

³⁰⁶ Tr. at 257.

³⁰⁷ Tr. at 298.

³⁰⁸ Tr. at 267.

³⁰⁹ Tr. at 272.

³¹⁰ Tr. at 272.

³¹¹ Tr. at 275.

³¹² Tr. at 291-292.

³¹³ Tr. at 273.

³¹⁴ Tr. at 274.

³¹⁵ Tr. at 642-648.

³¹⁶ Tr. at 1106.

³¹⁷ Tr. at 1109.

³¹⁸ Tr. at 1122.

³¹⁹ Tr. at 1123.

³²⁰ Tr. at 1119.

³²¹ Tr. at 1112.

³²² Tr. at 1114.

100. *** provides speech services through ***.³²³ For other special education services, private providers paid for by students' families are allowed to come to the campus.³²⁴ *** has a service called *** which is available for an extra fee. *** is for *** students or students falling behind in ***.³²⁵ *** has a technology class for students, and *** (***)³²⁶
101. *** was Student's *** teacher at ***.³²⁷ Ms. *** collaborates with Ms. ***.³²⁸ Ms. *** tracked a lot of different behaviors of Student.³²⁹ Ms. *** had targets for Student and took the lead in seeing that Student met them.³³⁰ Ms. *** observed Ms. ***'s strategies with Student.³³¹ Ms. *** thinks Student needs more on-on-one support.³³²
102. Ms. ***'s class goes to *** weekly.³³³ Student attends lunch with the other students and does fine at lunch.³³⁴ Student did not have to leave the class during *** and took Student's ***.³³⁵ Student did not have difficulty participating in *** or ***.³³⁶ Ms. *** said Student does not exhibit the behaviors which occurred at the District.³³⁷
103. At the beginning of the year Student had some trouble paying attention and with transitions. Student also ***.³³⁸ However, a lot of *** the beginning of the year need to know the routine. Some of them can be impulsive and make choices contrary to what the routine is.³³⁹ Student had *** instances of *** at the beginning of the year.³⁴⁰
104. Student made progress academically at ***.³⁴¹ Student made progress on ***, ***, ***, ***, ***, and ***.³⁴²

³²³ Tr. at 1114-1115.

³²⁴ Tr. at 1115.

³²⁵ Tr. at 1116.

³²⁶ Tr. at 1118.

³²⁷ Tr. at 484.

³²⁸ Tr. at 488.

³²⁹ Tr. at 488.

³³⁰ Tr. at 489.

³³¹ Tr. at 509.

³³² Tr. at 506.

³³³ Tr. at 486.

³³⁴ Tr. at 489.

³³⁵ Tr. at 489-490.

³³⁶ Tr. at 490.

³³⁷ Tr. at 533.

³³⁸ Tr. at 494-495.

³³⁹ Tr. at 494.

³⁴⁰ Tr. at 497.

³⁴¹ Tr. at 492.

³⁴² Tr. at 491-494.

105. While attending *** with ABA therapy, Student made social gains and *** decreased at school to a very low rate.³⁴³ Dr. *** believes that the improvement in Student's behavior is attributable to the private ABA therapy Student has been receiving.³⁴⁴
106. During the 2016-2017 school year Student was in a classroom of *** students and one teacher at ***, with an ABA therapist who was in the classroom with Student during the day.³⁴⁵ Student was also receiving ABA, speech, PT, and OT services outside the school setting.³⁴⁶
107. Parents believe it is best for Student to remain at ***. Student is happy, in a good environment, and healthy. Student is comfortable, learning, and making progress.³⁴⁷ Student is interacting with similar aged *** and displays normal behavior.³⁴⁸ Student is able to interact with friends in class.³⁴⁹ Student's father does not think Student can afford another year of transition.³⁵⁰
108. Tuition for Student for the 2016-2017 school year at *** was \$***.³⁵¹

Least Restrictive Environment

109. The September ***, 2015 ARDC developed an educational program for Student that offered Student placement in a general education *** classroom with special education support and services.³⁵² The ARDC determined that Student was to spend *** hours of time in general education and *** hours in special education.³⁵³
110. The February ***, 2016 ARDC determined that Student required special education support services in the general education classroom, accommodations, OT consultation, speech and language direct services and consultation.³⁵⁴ The ARDC determined that Student was to spend the following amount of time in general education and special education: Spring 2015-2016: *** in general education, and *** hours in special education; Fall 2016-2017: *** in general education, and *** hours in special education.³⁵⁵
111. An ARDC meeting was held on January ***, 2017. The curriculum setting was established as during the Spring 2016-2017 semester and 2017-2018 school year, Student was to spend *** hours in general education and *** hours in special education.³⁵⁶

³⁴³ PE31 at PE002149; Tr. at 324.

³⁴⁴ Tr. at 1439.

³⁴⁵ JE11 at JE000289; Tr. at 486.

³⁴⁶ JE28 at JE000901.

³⁴⁷ Tr. at 1404.

³⁴⁸ Tr. at 711.

³⁴⁹ Tr. at 256.

³⁵⁰ Tr. at 1406.

³⁵¹ PE35.

³⁵² JE1.

³⁵³ PE16 at PE001399.

³⁵⁴ JE9 at JE000241-242.

³⁵⁵ JE7 at JE00177.

³⁵⁶ RE1 at RE002435.

Evaluations Conducted by Respondent

112. During the September ***, 2015 ARDC meeting, it was determined that Student should be evaluated for in-home training.³⁵⁷
113. Respondent conducted an FIE in September and October 2015 and documented the findings in an FIE report dated October ***, 2015.³⁵⁸ This FIE was conducted by qualified professionals who collected and reviewed previous evaluation and educational records, conducted a parent interview, conducted assessments utilizing standardized assessment tools, conducted health screenings, and conducted observations. The assessment included sociological status, communication/speech and language, health/physical, emotional/behavior, achievement/developmental/functional, cognitive/adaptive behavior, and occupational therapy. The report noted that Student met the IDEA eligibility criteria for autism as a primary disability and speech impairment as a secondary eligibility.³⁵⁹
114. On October ***, 2015 Respondent completed an Occupational Therapy Assessment of Student.³⁶⁰ The recommendation was that Student did not demonstrate any significant *** difficulties that would impact Student's ability to successfully participate in the special education academic and non- academic setting. Overall *** and *** in addition to *** skills appeared to be functional and age appropriate.³⁶¹
115. During the October ***, 2015 ARDC meeting, an in-home training evaluation was discussed. Notice of evaluation and request for evaluation were provided to Parent. Parent provided written consent.³⁶²
116. On December ***, 2015 Respondent completed an AT evaluation of Student. The AT assessment included an evaluation of Student's needs in the areas of ***, ***, ***. Assistive technology was not recommended at that time.³⁶³
117. Respondent conducted an educational occupational therapy assessment of Student in August of 2016.³⁶⁴ The District's OT recommended a *** for Student to provide the teachers with strategies to help Student engage and deescalate behaviors.³⁶⁵ This information was provided to the ARDC.³⁶⁶

³⁵⁷ JE1 at JE000011.

³⁵⁸ JE2.

³⁵⁹ JE2.

³⁶⁰ JE3.

³⁶¹ JE3 at JE000058.

³⁶² JE5 at JE000136, JE000143-145.

³⁶³ JE6.

³⁶⁴ JE10.

³⁶⁵ Tr. at 952.

³⁶⁶ Tr. at 952.

118. Respondent conducted an In -Home Needs Assessment in February of 2016. This evaluation reviewed the area of academics, behavior, communication, community, leisure, self-help, and socialization. The evaluator recommended ***- minute sessions of parent training for the *** weeks of the 2015-2016 school year. The evaluator did not recommend in-home training.³⁶⁷
119. Parent met with Dr. *** on April ***, 2016.³⁶⁸ Dr. *** believed it would be beneficial to have a full evaluation of Student.³⁶⁹ Respondent completed a FIE on November ***, 2016. This FIE was conducted by qualified professionals who collected and reviewed previous evaluation and educational records, conducted a parent interview, conducted assessments utilizing standardized assessment tools, conducted health screenings, and conducted observations. The assessment included social status, communication/speech and language, health/physical, emotional/behavior, achievement/developmental/function, cognitive/adaptive behavior, and occupational/therapy. The assessment noted that Student met the IDEA eligibility criteria for autism as a primary disability and speech impairment as a secondary impairment.³⁷⁰

Prior Written Notice and Notice of Procedural Safeguards

120. Respondent received parental consent to conduct a FIE on September ***, 2015.³⁷¹
121. Parent signed the September ***, 2015 IEP indicating that she participated in the ARD discussion.³⁷² Parent received a copy of Respondent's Explanation of Procedural Safeguards and PWN dated September ***, 2015.³⁷³
122. Respondent offered Parent a copy of Procedural Safeguards at the October ***, 2015 ARDC meeting.³⁷⁴
123. An ARDC meeting was convened on February ***, 2016. Respondent provided Parent a copy of the Procedural Safeguards, and PWN of proposed changes to the IEP.³⁷⁵
124. PWN was provided to Parent on March ***, 2016.³⁷⁶
125. Respondent provided Parent with PWN on February ***, 2017.³⁷⁷

³⁶⁷ JE8.

³⁶⁸ PE14; Tr. at 101.

³⁶⁹ Tr. at 100-101.

³⁷⁰ JE11.

³⁷¹ JE2.

³⁷² JE1 at JE000031.

³⁷³ JE1 at JE000029-JE000030.

³⁷⁴ JE4 at JE000087-88, JE000100.

³⁷⁵ JE9.

³⁷⁶ PE17; JE7.

³⁷⁷ RE1.

V. DISCUSSION

The IDEA was enacted to ensure that children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.³⁷⁸ It requires that at the beginning of each school year, each local education agency (LEA) have in effect for each child with a disability in its jurisdiction, an individualized education program (IEP).³⁷⁹ In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in ***, the LEA shall provide such child with a FAPE, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the LEA conducts an evaluation, if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.³⁸⁰ School districts may not ignore the needs of a disabled student, nor may they await parental demands before providing specialized instruction.

Under the IDEA and its implementing regulations, a FAPE includes special education and related services that are provided at public expense, under public supervision and direction, without charge, and meet the standards of the SEA. An appropriate *** is included in the definition.³⁸¹

Upon a finding that a child has a disability, an Admissions, Review, and Dismissal Committee (ARDC) meets to develop an IEP for the child.³⁸² The ARDC consists of a school district representative, a special education teacher, the child's parents or guardian, and where appropriate the child. The IEP developed by the ARDC need not be the best possible plan for the child, nor one that will maximize the child's potential; rather it need only be a basic floor of opportunity, specifically designed to meet the child's unique needs, and supported by services that will permit Student to benefit from the instruction. An IEP must be designed to achieve a meaningful educational benefit.³⁸³

In *Andrew F. v. Douglas County School District*,³⁸⁴ the Supreme Court held that the substantive standard for a FAPE under the IDEA is that the IEP be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Respondent failed to provide Student with a FAPE during the 2015-2016 school year.

The U.S. Supreme Court has ruled that a FAPE requires tailoring and education to the unique needs of the child with a disability. The Court ruled that an educational program is meaningful if it is

³⁷⁸ 20 U.S.C §1400.

³⁷⁹ 20 U.S.C § 1414(d).

³⁸⁰ 20 U.S.C. §1414(d).

³⁸¹ 34 C.F.R. §300.17.

³⁸² *R.H. v. Plano Independent School District*, 607 F.3d 1003 (5th Cir. 2010).

³⁸³ *C.M. v. Warren Independent School District*, 117 LRP 17212 (2017).

³⁸⁴ *Andrew F. v. Douglas County School District*, 69 IDELR 174 (2017).

reasonably calculated to confer a meaningful educational benefit rather than regression or trivial educational advancement.³⁸⁵

The Fifth Circuit has set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These factors are whether (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the LRE; (3) the services are provided in a coordinated and collaborative manner by the key stakeholders; and (4) positive academic and nonacademic benefits are demonstrated.³⁸⁶

Petitioner proved that Student was denied a FAPE for the 2015-2016 school year. Respondent failed to propose an appropriate IEP for Student during the 2015-2016 school year. (Therefore, Petitioner has satisfied the first prong for reimbursement of a unilateral private placement for the 2016-2017 school year.) Student was engaging in high risk behavior such as ***, without a behavior plan. Respondent was not providing needed services such as BCBA therapy for Student. Student was not receiving enough one on one support. The IEP did not include ESY services. Nor was Respondent tracking or measuring Student's performance in a meaningful manner.

Student's IEP from *** notes that in order for Student to make meaningful progress Student needs a *** with individualized instruction.³⁸⁷ Student did not receive this during the 2015-2016 school year while enrolled in the District. Student's IEP from *** states that Student needed summer services to prevent significant regression.³⁸⁸ Respondent did not offer ESY. When Student was at *** Student had a ***.³⁸⁹ A review of Student's records from *** indicate that Student did not exhibit the behaviors that Student did while programmed in the District.³⁹⁰

The ARDC met on October ***, 2015 to develop an IEP. The committee was not able to reach an agreement on all required elements of the IEP. Therefore, the committee recessed and reconvened within 10 school days. On October ***, 2015, the ARDC reconvened and was still unable to reach an agreement. Therefore, Respondent implemented the October ***, 2015 IEP.

The October *** ARDC report notes that Student was to receive occupational therapy - consultative service *** minutes *** per *** weeks; ***/*** services; speech language consultative services *** minutes every *** weeks; speech language services *** minutes *** times per *** weeks.³⁹¹ It was determined that Student would spend *** hours in general education and *** in special education per day.³⁹² The services Respondent proposed were less than the services Student received at ***.

³⁸⁵ *Board of Education of Hendrick Central School District v. Rowley*, 102 S.Ct. 3034 (1982).

³⁸⁶ *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997)

³⁸⁷ PE1 at PE000001006.

³⁸⁸ PE1 at PJE000001017.

³⁸⁹ PE1 at PE0000001018.

³⁹⁰ PE1.

³⁹¹ JE5 at JE000129-131.

³⁹² JE5 at JE000135.

While Student was enrolled in the District, Student exhibited behaviors (***) that Student did not exhibit prior to becoming a student in the District, or while a student at ***. During the 2015-2016 school year Student exhibited behavior regression.³⁹³ These behaviors were affecting Student's ability to participate in the educational program in a meaningful way to such a point that Student began ***.³⁹⁴ Additionally, Student was not making progress academically.³⁹⁵ Parent notified the District regarding Student's regression.³⁹⁶

In developing an IEP, the IDEA requires that the ARDC address behavior management whenever a student's behavior is interfering with the child's ability to benefit from the educational program. The ARDC must consider the child's need for the use of positive behavioral interventions and supports, and other strategies, in the case of a student with a disability whose behavior impedes the student's learning or that of others.³⁹⁷

Student consistently exhibited behavior which impeded Student's learning.³⁹⁸ Student was ***.³⁹⁹ Respondent did not complete a FBA or implement a behavior plan. Nor did Respondent track or measure Student's behavior in a consistent or meaningful manner.⁴⁰⁰ Additionally, the September ***, 2015 IEP states that Student did not exhibit significant behavioral challenges which adversely affect Student's educational performance or the learning of others.⁴⁰¹ The September *** ARDC also determined that Student did not need the use of positive behavior support strategies.⁴⁰² The October ***, 2015 FIE report notes that the Student's behavior does not impede Student's learning or the learning of others.⁴⁰³ The District did not provide needed ABA based services for Student.

Regarding Petitioner's claim that Respondent failed to timely implement the IEP from ***, Petitioner's claims prior to September ***, 2015 are time barred. The ARDC met on September ***, 2015 to develop an IEP for Student. There was insufficient evidence to support the allegation that Respondent did not provide comparable services to Student between the period of September *** and the implementation of the new IEP. Parent signed the September ***, 2015 IEP which was then timely implemented by Respondent.⁴⁰⁴

Regarding the issue of restraints, the evidence did not support the allegation that Student was restrained by Respondent while a student at *** or ***.

Respondent failed to provide Student with a FAPE during the 2016-2017 school year.

³⁹³ JE18; RE7; PE46.

³⁹⁴ Tr. at 730-731.

³⁹⁵ PE18.

³⁹⁶ PE8 at PE001314.

³⁹⁷ 34 C.F.R §300.324(a)(2).

³⁹⁸ JE18; RE7; PE46.

³⁹⁹ Tr. at 409.

⁴⁰⁰ Tr. at 569.

⁴⁰¹ JE1.

⁴⁰² JE1 at JE000010.

⁴⁰³ JE2 at JE000046.

⁴⁰⁴ JE1.

Based upon the evidence submitted, this hearing officer does not believe that the January *** IEP provided Student with a FAPE. It is the opinion of the undersigned that Student was making progress because of the services Student was receiving outside of the District. The evidence supports the position that Student needed more 1:1 support than Respondent was willing to provide. Student also needed extensive BCBA therapy which Respondent was not willing to provide. The January ***, 2017 ARDC Report states that Student did not need ESY or the use of positive behavior support strategies.⁴⁰⁵ The committee determined that Student did not need extended educational programming as part of Student's IEP.⁴⁰⁶

During the 2016-2017 school year, Student was in a classroom of *** students and one teacher at ***, with an ABA therapist who was in the classroom with Student.⁴⁰⁷ Student was also receiving private ABA, speech, PT, and OT services outside the school setting.⁴⁰⁸

When Student was enrolled at the District Student was in a classroom of approximately *** students and had ***. Student was regressing in behavior which was interfering with Student's ability to have a meaningful educational program at the District. Student's teacher at *** thinks Student needs more one on one support.⁴⁰⁹

Dr. *** assessed Student.⁴¹⁰ Dr. *** determined that for children with a diagnosis of autism, ABA is the most recommended form of treatment.⁴¹¹ The January ***, 2017 IEP provided by Respondent does not provide for ABA services.⁴¹²

Dr. *** believes moving Student back to the District would be detrimental to Student.⁴¹³ Dr. *** notes that the behaviors exhibited by Student at the District were continuing but no FBA was conducted.⁴¹⁴ She noted that there was no evidence of meaningful progress monitoring of Student's IEP by Respondent.⁴¹⁵ She thinks this was significant because if we don't understand what progress is being made, we need better evidence.⁴¹⁶ Dr. *** noted that Student's IEPs at the District were similar.⁴¹⁷ The last IEP offered by Respondent is remarkably similar to what was offered previously and the previous IEPs did not work.⁴¹⁸ This Hearing Officer agrees with Dr. ***.

⁴⁰⁵ RE1 at RE0002422.

⁴⁰⁶ RE1 AT RE002424.

⁴⁰⁷ JE11 at JE000289.

⁴⁰⁸ JE28 at JE000901.

⁴⁰⁹ Tr. at 506.

⁴¹⁰ PE13.

⁴¹¹ Tr. at 1462.

⁴¹² RE1.

⁴¹³ Tr. at 571.

⁴¹⁴ Tr. at 554.

⁴¹⁵ Tr. at 569.

⁴¹⁶ Tr. at 569.

⁴¹⁷ Tr. at 569.

⁴¹⁸ PE36; Tr. at 650-651.

There is a consensus in the scientific community that ABA therapy is effective for kids with autism.⁴¹⁹ The IEPs proposed by Respondent during the 2015-2016 and 2016-2017 school year did not provide for this service. However, according to Dr. ***, Student was making progress due to receiving this therapy.⁴²⁰

Least Restrictive Environment

The IDEA requires that children with disabilities be placed in the least restrictive environment. To the maximum extent appropriate, children with disabilities in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁴²¹

The record does not suggest that Respondent failed to educate Student in the LRE. The September 2015 ARDC recommended that Student receive all instruction and services in the general education setting with supplementary aids and services.⁴²² During the 2015-2016 school year, Student was in a mainstreamed environment. Student was not at the District during the 2016-2017 school year, but rather was enrolled at ***. However, Student's IEP's for the 2015-2016 and 2016-2017 school years, placed Student in the general education classroom.

Private Placement

If no suitable public school is available, the school system must pay the costs of sending the child to an appropriate private school.⁴²³ The IDEA requires school districts to reimburse parents for their private-school expenses if (1) school officials failed to offer the child a FAPE in a public or private school; and (2) the private-school placement chosen by the parents was otherwise proper under the IDEA.⁴²⁴

A parent who unilaterally places a child with a disability in a private school, without consent of the school system, does so at his or her own risk.⁴²⁵ Tuition reimbursement for private education is a remedy available to hearing officers where a school district fails to provide a child with FAPE. To receive reimbursement, Petitioner must show that Student's public placement in the District was inappropriate under the IDEA and Student's private school placement, in this case at ***, was proper under the IDEA.⁴²⁶

⁴¹⁹ Tr. at 541.

⁴²⁰ Tr. at 568.

⁴²¹ 20 USCS 1412(a)(5)(A)

⁴²² JE1.

⁴²³ *Reid v. District of Columbia*, 401 F.3d 516, 519 (D.C. Cir. 2005).

⁴²⁴ *Leggett v. District of Columbia*, 793 F.3d 59, 66-67 (D.C. Cir. 2015).

⁴²⁵ *Florence County School District Four v. Carter*, 510 U.S. 7 (1993).

⁴²⁶ *R.H. v. Plano Independent School District*, 607 F.3d 1003 (2010).

The IDEA states that the cost of reimbursement may be reduced or denied if: 1) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or 2) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described above.⁴²⁷

This notice requirement was created to provide the school system an opportunity before the child is removed, to assemble a team, evaluate the student, devise an appropriate plan, and determine whether a FAPE can be provided. When a school district fails to show any substantive harm caused by a parent's violation of the notice provision, a court may not deny reimbursement on the basis of notice alone.⁴²⁸

During an October ***, 2015 ARDC meeting, Parent notified Respondent that she disagreed with the proposed IEP and was considering private school for Student. Parent notified Respondent she would seek reimbursement from Respondent for the private school.⁴²⁹ On April ***, 2016 Parent notified Respondent that they were considering removing Student from school and placing Student at ***. Parent also told Respondent that Parents had obtained private ABA therapy, speech/language, and occupational therapy services for Student.

For the 2016-2017 school year, Parents placed Student at *** (***), a private school, and seek reimbursement from the District under the IDEA for the cost of tuition at ***, as well as transportation costs to and from the school. Based upon the evidence submitted, the undersigned has determined that *** was a proper placement for Student for the 2016-2017 school year. Respondent was not providing FAPE to Student, and placement at *** was reasonably calculated to enable Student to receive educational benefits. While at *** during the 2016-2017 school year, Student made positive academic and non-academic progress.⁴³⁰ *** provided some of the supports that Student needed. Parents provided intense ABA supports that was taught throughout the day.⁴³¹

According to Student's mother, Student was happier and developing better at *** than at the District. Student made progress in a number of areas including behavior and socializing with other students.⁴³² The principal at *** has observed Student and believes Student is doing very well.⁴³³ Student does not have any discipline issues and is doing well socially.⁴³⁴ The support provided by the ABA therapist at *** was a combination that provided Student with a supportive classroom, and was an educational fit for Student.⁴³⁵ Dr. *** believes that the improvement in Student's behavior is attributable

⁴²⁷ 20 U.S.C. 1412.

⁴²⁸ *M.G. v. District of Columbia*, 117 LRP 11984 (2017).

⁴²⁹ JE5 at JE000136.

⁴³⁰ Tr. at 492.

⁴³¹ PE42 at PE002314.

⁴³² RE1 at RE002457; Tr. at 1402.

⁴³³ Tr. at 1119.

⁴³⁴ Tr. at 1112.

⁴³⁵ PE31 at PE002149.

to the private ABA therapy Student has been receiving.⁴³⁶ Student's father does not think Student can afford another year of transition.⁴³⁷

The IDEA makes removal to a private school placement the exception, not the default. The statute was designed to bring disabled students into the public educational system and ensure them a free appropriate *public* education.⁴³⁸ Therefore, caution is to be used before holding that a school district is required to place a child outside the available range of public options. However, based upon a review of the record, the undersigned finds no basis to deny or reduce re-imbursement for tuition and related expenses at *** for the 2016-2017 or 2017-2018 school years. Respondent did not provide Student with a FAPE during the 2015-2016 and 2016-2017 school years. The most current IEP proposed by Respondent does not provide the support or services needed by Student for a FAPE. Compensatory education may be provided in the form of private placement. The Eleventh Circuit Court of Appeals held that nothing in the IDEA precludes an award of compensatory education in the form of placement in a private school.⁴³⁹ Accordingly, this hearing officer finds that Student should be awarded one year of compensatory education at ***, to be fulfilled during the 2017-2018 school year.

In the complaint, Petitioner requested that Respondent be ordered to reimburse Parents for any and all costs incurred in providing Student private services including mileage for the 2015-2016 and 2016-2017 school years. However, Petitioner did provide sufficient evidence to support an order for reimbursement for *** ** for ABA, PT, OT, and speech and language services.

ESY

Petitioner identifies as a sub issue whether Respondent failed to provide Student with ESY during the summers of 2016 and 2017. Under Texas law, the need for ESY services must be documented from formal or informal evaluations provided by the District or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current IEP goals and objectives, the student has exhibited or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.⁴⁴⁰

The IEP from *** noted that Student needed summer services to prevent significant regression.⁴⁴¹ During the summer of 2015, Student *****.⁴⁴² However, given that ***, Student was not able to take advantage of summer services.⁴⁴³ When Student enrolled in the District, Respondent determined that Student did not need extended services. On September ***, 2015, Student's teacher *** tested Student.

⁴³⁶ Tr. at 1439.

⁴³⁷ Tr. at 1406.

⁴³⁸ *R.H. v. Plano Independent School District*, 697 F.3d 1003 (2010).

⁴³⁹ *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275 (11th Cir. 2008).

⁴⁴⁰ 19 Tex. Admin. Code §89.1065.

⁴⁴¹ PE1 at PE000001017.

⁴⁴² Tr. at 769.

⁴⁴³ Tr. at 768.

Student did not ***. ⁴⁴⁴ Student never re-gained that skill while at ***. ⁴⁴⁵ Student was regressing academically even with the services provided by Respondent. Petitioners met their burden that Student was entitled to ESY services during the summer of 2016.

Given that Student has made progress through the use of private services provided during the 2016-2017 school year, it is unclear if Student needed ESY services during the summer of 2017. Petitioner did not meet their burden of proof on this sub-issue.

Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 School Years.

During the 2015-2016 and 2016-2017 school years, Respondent completed the following evaluations of Student, all of which were done by qualified professionals:

- a. October ***, 2015- OT evaluation. ⁴⁴⁶
- b. October ***, 2015- FIE. ⁴⁴⁷
- c. December ***, 2015- AT evaluation. ⁴⁴⁸
- d. February ***, 2016-In-home needs assessment. ⁴⁴⁹
- e. August 2016 OT assessment. ⁴⁵⁰
- f. November ***, 2016-FIE. ⁴⁵¹

Although Student had behavioral issues at the District, a FBA was not completed for Student, nor did Respondent ask for one. ⁴⁵² Parent did not know she could ask for one. ⁴⁵³ Mr. *** testified that in his opinion, the absence of a FBA did not render Student's programs inappropriate at *** and ***. ⁴⁵⁴ However, based upon the behaviors of Student, Mr. *** would have preferred that one had been done. ⁴⁵⁵

This Hearing Officer agrees with Dr. *** that a FBA for Student was warranted, and that Respondent's failure to complete a FBA equates to Respondent failing to properly evaluate Student pursuant to the IDEA. The District had the responsibility to ensure that the functional performance of Student was evaluated. ⁴⁵⁶ The evaluation procedures used should have assessed both cognitive and behavioral factors, in addition to physical or developmental factors. ⁴⁵⁷

Respondent provided Parents with PWN and Procedural Safeguards during the 2015-2016 and 2016-2017 school years.

⁴⁴⁴ Tr. at 767.

⁴⁴⁵ Tr. at 767.

⁴⁴⁶ JE3.

⁴⁴⁷ JE4.

⁴⁴⁸ JE6.

⁴⁴⁹ JE8.

⁴⁵⁰ JE10.

⁴⁵¹ JE11.

⁴⁵² Tr. at 385.

⁴⁵³ Tr. 740-741.

⁴⁵⁴ Tr. at 1316-1317.

⁴⁵⁵ Tr. at 1317-1318.

⁴⁵⁶ 34 C.F.R. §300.301 through 34 C.F.R. §300.304.

⁴⁵⁷ 34 C.F.R.300.304.

The IDEA requires states to establish and maintain procedural safeguards to ensure that children with disabilities are receiving a FAPE.⁴⁵⁸ These safeguards include allowing parents to serve on the ARDC and requiring the LEA to provide parents with written notice of plans to change or refusal to change, an identification or placement.⁴⁵⁹ Parents are to be provided with an opportunity to present complaints regarding the identification, evaluation, and educational placement of the child, and the provision of a FAPE.⁴⁶⁰ If complaints are not resolved, the parents are entitled to an impartial due process hearing conducted by the state or local educational agency.⁴⁶¹

Petitioner alleges that Respondent failed to comply with the procedural requirements of the IDEA, including the provision of PWN and procedural safeguards. During the 2015-2016 and 2016-2017 school years, Respondent complied with all of the procedural requirements of the IDEA, including the provisions of PWN. Parents received PWN prior to evaluations and when changes were proposed. Parents received notification of scheduled ARDC meetings as well as decisions that were made at those meetings. The notice of scheduled meetings informed Parents of the reasons for the meetings, who would attend, and the documentation that would be considered. The notice provided contact information for a person to contact with questions, and it was in Parent's native language.⁴⁶²

The record in this case reflects that Student's Parents were present and active members of the ARDC meetings. Parents were provided all IEP documents and assessment reports.⁴⁶³ Parents may have disagreed with the substance of the IEP documents, however they did not present evidence that Respondent failed to provide PWN in violation of the IDEA.

Petitioner also failed to produce evidence that Respondent failed to provide Parents with Procedural Safeguards. Petitioner bears the burden of proof that Respondent did not comply with the procedural requirements under the IDEA resulting in a denial of a FAPE. Parent signed written receipt prior to assessments and with every ARDC meeting.⁴⁶⁴

Procedural defects alone do not constitute a violation of a FAPE unless they result in a loss of educational opportunity.⁴⁶⁵ After consideration of the alleged procedural defects and the record, the undersigned has determined that even if Student's IEP was procedurally deficient in some respects, Petitioner did not establish that any procedural deficiency resulted in a loss of educational opportunity or infringed on Parents opportunity to participate in the IEP process.

⁴⁵⁸ 20 USCS 1415(a).

⁴⁵⁹ *Winkelman v. Parma City School District*, 550 U.S. 516 (2007).

⁴⁶⁰ 20 USCS 1415(b).

⁴⁶¹ 20 USCS 1415(f).

⁴⁶² JE1 at JE000030, JE000035-37; JE4 at JE000105-107; JE7 at JE000189, JE000191-197; JE9 at JE000261-272; RE1 at RE002447-2450.

⁴⁶³ JE1 at JE000028; RE1 at RE002440-2442; JE4; JE5; JE7; JE9.

⁴⁶⁴ JE1 at JE000028-29; JE4 at JE000100; JE5 at JE000143-145, JE000149; JE7 at JE000188-189; JE9 at JE000257; RE1 at RE002436.

⁴⁶⁵ *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003).

Assistive Technology

Petitioner raised the sub-issue of whether Respondent failed to provide Student with AT services during the 2015-2016 school year. The October 2015 ARDC determined that Student did not need AT services.⁴⁶⁶ On December ***, 2015, Respondent completed an AT evaluation of Student. The AT assessment included an evaluation of Student's needs in the areas of ***, ***, ***. Assistive technology was not recommended at that time.⁴⁶⁷ That recommendation is supported by a private evaluation conducted by ***, CCC-SLP through Student's medical insurance. The October ***, 2015 report from Ms. *** states that AT devices and services were not recommended at that time.⁴⁶⁸ Petitioner failed to offer sufficient evidence to support this allegation.

VI. CONCLUSIONS OF LAW

1. Petitioner currently resides within the geographical boundaries of the Killeen Independent School District, a legally constituted independent school district within the State of Texas. Petitioner is entitled to special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400, *et. seq.*
2. Respondent is a local educational agency (LEA) responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal education funding, and Respondent is required to provide each disabled child in its jurisdiction with a free and appropriate public education, (FAPE), pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
3. Parents of students with disabilities are entitled to file a due process complaint and have a hearing on any matter related to the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. 20 U.S.C. §1415(f).
4. Killeen Independent School District's educational program is presumed to be appropriate. As the party challenging the educational program proposed and instituted by the District, Petitioner bears the burden of proof on all issues raised in Petitioner's complaint.⁴⁶⁹ The burden of proof is by a preponderance of evidence.⁴⁷⁰
5. The Texas one-year statute of limitations (SOL) began to run one year before the date the complaint was originally filed on September 20, 2016. 19 Texas Administrative Code §89.1151(c).
6. Respondent correctly determined that Student is a child with one or more of the IDEA enumerated disabilities who, by reason thereof, is eligible for special education and related services, which Student received as a child with Autism and Speech Impairment. 19 Texas Administrative Code §89.1040(a).

⁴⁶⁶ JE4 at JE000074.

⁴⁶⁷ JE6.

⁴⁶⁸ PE12 at PE001362.

⁴⁶⁹ *Schaffer ex re. v. Weast*, 546 U.S. 49 (2005).

⁴⁷⁰ *Salley v. St. Tammany Parish School Board*, 57 F.3d 458, 467 (5th Cir. 1998).

7. Respondent's proposed placement for the 2015-2016 and 2016-2017 school years placed Student in the LRE. 20 U.S.C. §1412(a)(5)(A).
8. Respondent failed to develop an appropriate IEP for Student during the 2015-2016 and 2016-2017 school years. 34 C.F.R. §300.320 through 300.324.
9. Respondent failed to provide Student with a FAPE for the 2015-2016 school year including the summer of 2016. 34 C.F.R. §300.17.
10. *** was a proper placement of Student for the 2016-2017 school year.
11. Respondent failed to provide Student with a FAPE during the 2016-2017 school year. 34 C.F.R. §300.17.
12. Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 school years. 34 C.F.R. §300.301 through 34 C.F.R. §300.304.
13. Respondent provided Petitioner PWN pursuant to the IDEA during the 2015-2016 and 2016-2017 school years. 34 C.F.R. §300.503.
14. Respondent provided parents with a Notice of Procedural Safeguards prior to completing the October ***, 2015 FIE.
15. Respondent is to reimburse Parents for Student's tuition at *** for the 2016-2017 school year. 34 C.F.R. §300.148.
16. Student's placement at *** for the 2017-2018 school year is proper.
17. Student's placement at *** at District expense for the 2017-2018 school year is appropriate.
18. Respondent is to reimburse Parents for mileage transportation to and from *** for the 2016-2017 and 2017-2018 school years.

VII. ORDER

Having considered the evidentiary record and the foregoing Findings of Facts and Conclusions of Law, the hearing officer orders as follows:

Petitioner's requested relief is denied in part and granted in part. Student is to remain at *** for the 2017-2018 school year. Respondent is to reimburse Petitioner for all costs of Student's attendance at *** for the 2016-2017 and 2017-2018 school years, including tuition, cost of additional support services, and mileage transportation to and from school.

Any claim or relief sought in this hearing that has not been specifically granted, is hereby denied.

SIGNED and ENTERED on July 15, 2017.

Sherry Wetsch
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

This Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decision made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any State court of competent jurisdiction or in a district court of the United States.⁴⁷¹

⁴⁷¹ 34 C.F.R. §300.516.