

DOCKET NO. 069-SE-1116

STUDENT, B/N/F PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
	§	
UPLIFT EDUCATION,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Petitioner, ***, b/n/f *** (“Petitioner” or “Student”) brings this action against Uplift Education (“Respondent,” or “the charter school”) under the Individuals with Disabilities Education Act, as amended, 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the charter school failed to provide Student with a free, appropriate public education (FAPE) during the current 2016-2017 school year and, if not, whether Student needs a private placement. The hearing officer concludes the charter school’s program provided Student with the requisite educational benefit and therefore Student is not entitled to private placement at charter school expense.

A. Continuances and Extension of Decision Due Date

This case was originally assigned to Hearing Officer Tommy Broyles. Hearing Officer Broyles granted a continuance of the due process hearing and extension of the decision date at the request of both parties to allow the parties to attempt mediation before proceeding to hearing. Mediation took place on January 11, 2017 but was not successful. Hearing Officer Broyles continued the due process hearing to February 6-7, 2017 and extended the decision due date to March 3, 2017 as requested by the parties.

The case was reassigned to the undersigned hearing officer on January 23, 2017. A second prehearing conference convened by telephone on January 31, 2017 after Petitioner failed to timely file disclosure documents. At Petitioner's request the due process hearing was continued to February 23-24, 2017, and the decision due date extended to April 21, 2017 in Order No. 4 issued on February 1, 2017.

B. Legal Representatives

Student has been represented throughout this litigation by Student's mother, *** (Ms. ***) who is not an attorney. The charter school has been represented throughout this litigation by its legal counsel Jan Watson with the law firm of Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

C. Resolution Session and Mediation

The parties attempted mediation in lieu of the Resolution Session on January 11, 2017, but it was not successful.

D. Preliminary Motions

Hearing Officer Broyles dismissed all of Petitioner's non-IDEA claims as well as IDEA claims that arose outside the one-year statute of limitations in Order No. 2 issued on December 13, 2016. Petitioner's Request to Amend or To Include *** as a Co-Respondent was denied in Order No. 5 issued on February 10, 2017. Petitioner's request to authorize a non-attorney representative was denied as untimely in Order No. 8 issued on February 17, 2017.

II. DUE PROCESS HEARING

The due process hearing was conducted on February 23-24, 2017. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's mother, Ms. ***. Ms. ***'s *** attended the first day of the due process hearing.

Christa Dillard, Educational Advocate, assisted Ms. *** but did not act as Petitioner's non-attorney representative. Ms. Dillard was present for both days of the due process hearing.

Respondent continued to be represented by its legal counsel Jan Watson with the law firm of Walsh, Gallegos, Trevino, Russo & Kyle. In addition, ***, the Director of Special Education for the charter school, attended the hearing as the party representative.

The due process hearing was open to the public. At the conclusion of the hearing the parties requested the record remain open in order to allow submission of written closing arguments. The parties also requested an extension of the decision due date by three business days to allow the hearing officer an adequate opportunity to complete a review of the extensive record on file in this case, conduct the requisite legal research, and consider the written closing arguments in preparing the decision. The Decision in this case was extended, at the request of the parties, to April 25, 2017 in Order No. 12 issued on February 28, 2017.

III. ISSUES

Petitioner submitted the following overall, broad issue: Whether the charter school district failed to provide Student with a free, appropriate public education (FAPE) during the current 2016-2017 school year and specifically:

1. Whether the charter school failed to notify parent regarding alleged "limits" on the ability of *** (***) to offer special education services and, if so, whether that constitutes a violation of the IDEA;
2. Whether Student received an educational benefit from Student's program when Student failed to meet Individualized Education Plan (IEP) goals and objectives for ***, *** (***), and academics and whether the charter school unilaterally revised the IEP goals and objectives when Student failed to meet them;
3. Whether charter school staff are not properly trained in *** and *** and whether Student and Student's mother need *** and *** training in order for Student to receive FAPE;

4. Whether Student needs Assistive Technology (AT) in order to receive FAPE and whether the charter school failed to provide it;
5. Whether Student needs a behavior plan to address behavioral needs in order for Student to receive FAPE because the charter school requested *** during the school day;
6. Whether Student needs training on the *** (***) in order for Student to receive FAPE and whether the charter school failed to provide it;
7. Whether Student and Student's parents need in-home and parent training in order for Student to receive FAPE and whether the charter school failed to offer or provide it;
8. Whether the charter school failed to implement the "****" and whether Student needs that curriculum in order to receive FAPE;
9. Whether the charter school placed Student in a special education classroom and failed to document Student's daily activities, goals and/or accommodations, and if so, whether that constitutes a failure to provide FAPE;
10. Whether the charter school changed Student's placement from a special education classroom to a regular education setting following a parental request for installation of cameras in the special education classroom and, if so, whether that constitutes a failure to provide Student with FAPE in the least restrictive environment (LRE).

IV. REQUESTED RELIEF

Petitioner requests the following items of requested relief from the charter school district:

1. Assignment of an aide for Student;
2. Implement an appropriate curriculum, such as the ***, for Student;
3. Provide Student with *** to address Student's needs as a student with *** by a *** familiar with "****" and design a *** IEP to address Student's needs as *** student with *** and a ***;
4. Provide Student with training in the *** by a professional certified in the use of the ***;
5. Implement the *** in Student's classrooms and in *** and ***;
6. Provide Student's mother with *** training;

7. Place Student at a private school of parent's choice at the charter school's expense; and,
8. Provide Student with compensatory services in ***, ***, ***, (***) and *** (***) .

V. FINDINGS OF FACT

1. Student is a ***-year-old child eligible for special education services from the charter school as a student with *** (***) and *** (***) .¹
2. Student was initially provided with special education services by *** (***) beginning at age ***. Student was first identified as eligible for special education by *** through a Full Individual Evaluation (FIE) with a report issued on ***.² Student's three year re-evaluation is due ***.³ ***. ***.⁴
3. *** are *** disabilities that affect *** and ***. *** and ***. These criteria are generally *** and adversely affect the student's educational performance.⁵
4. At age ***, Student exhibited many characteristics and symptoms of *** including severe impairments in Student's *** and *** and abilities, Student's limited ability and ***, and Student's frequent *** and behavioral responses.⁶ Student exhibits profound deficits in the areas of *** and ***, *** and, specifically, in *** and ***.⁷
5. Student also has *** ***. ***. ***. *** and is a common condition associated with ***.⁸
6. Student needs educational tasks and activities that offer Student *** and opportunities for mastery in order to foster *** development and ***. Student needs specific tasks and activities that are reinforcing for Student and that encourage generalization and application of learned skills across settings.⁹
7. The severity of Student's *** poses difficult challenges for ***. Student needs both

¹ Respondent's Exhibit 5:4, 19; (referred to hereafter as R. __:__) R. 6:4.

² R. 1:1, 15-16; R. 3:1, 22-23.

³ R. 3:1.

⁴ Petitioner's Exhibit M:1 (referred to hereafter as P. __:__); Tr. I:122.

⁵ R. 1:12.

⁶ R.1:12.

⁷ P. D: 32; P:O: 28; Tr. I: 109.

⁸ P. D:31-32; Tr. I:125.

⁹ R. 1:13.

- individual and group instruction to learn basic ***. Student needs to be encouraged to work *** in order to learn, practice, and develop *** necessary to ***.¹⁰
8. Student's ***. Student needs ***. Student needs guided experiences in exhibiting *** through practice using a ***. Because Student is often *** Student needs as few instructions as possible. Instructions must be those Student can follow, asking for positive action rather than pointing out negative behavior. For example, instead of asking Student to stop doing something the request should be to ask Student to engage in a substitute positive behavior.¹¹
 9. Student needs significant support in the educational environment to address needs in ***, ***, ***, and behavior. Student's *** contribute to behavioral difficulties in the classroom. Student needs a classroom system that allows Student to *** in order to increase the amount of time spent on academic tasks and reduce *** behaviors. Student needs a *** instructional environment.¹² Student likes ***.¹³
 10. *** convened an annual Admission, Review & Dismissal Committee meeting (ARD) on May ***, 2016. The annual ARD discussed an independent evaluation report (*** IEE) conducted by *** (***) dated May ***, 2016. The ARD considered whether Student might also qualify for special education services as a student with Other Health Impairment (OHI) based on parental concerns over a possible ***. Information from a physician was requested by *** before the ARD would agree to add the OHI classification. *** agreed to fund an ***.¹⁴
 11. The *** IEE confirmed Student's continued eligibility for special education as a student with *** and ***. The *** IEE included a number of recommended instructional strategies as well as *** (***) and *** services.¹⁵
 12. The *** May ***, 2016 ARD recessed and reconvened on May ***, 2016 (collectively the May 2016 ARD). The May 2016 ARD designed IEP goals and objectives in Reading and Math (***), *** (*** and ***), *** (***, including ***, and ***), ***, and ***. A set of accommodations and *** (***) services were also included.¹⁶ Parent and in-home training were not included as services in the May 2016 *** IEP.¹⁷

¹⁰ R. 1:13.

¹¹ R. 1:13, 26.

¹² P. O:27-28; R. 2:27-28.

¹³ R. 6:2.

¹⁴ P: P: 1, 25-26; R. 3:1, 25-26.

¹⁵ P.O:27-29; R. 2:27-29.

¹⁶ R. 3:8-17, 22.

¹⁷ R. 5:16-17.

13. *** also proposed the following special education services: *** (***) direct instruction and consult, *** (***) consult, and, *** and *** direct and consult therapy. *** proposed Student's placement in a special education classroom with *** minutes per day in the general education *** (***) classroom and *** minutes per day in general education *** classes. Ms. *** disagreed with the amount of time in the general education setting. Student needed some *** to implement Student's IEP. There was a disagreement with Ms. *** about which *** to use. Ms. *** disagreed with a number of the ARD decisions.¹⁸
14. Another ARD in *** convened on June ***, 2016. The purpose of the ARD was to discuss compensatory *** services. *** agreed to provide Student with compensatory *** services and contracted with *** – an outside provider. *** agreed to provide Student with *** hours of compensatory *** ***.¹⁹
15. *** has been providing 1:1 private *** services to Student since June 2016. The private *** is being paid for through private insurance.²⁰ The ***** use a specific *** methodology with Student known as *** (***). *** ***, ***.
16. Student was initially seen in private *** *** a week. More recently Student is seen *** a week for *** minutes per session.²¹ Initially Student could be ***. In the past four to five months Student has not exhibited any ***.²² The private *** *** is also attempting to teach Student the use *** ***. *** is the ultimate goal of the private ***. Student needs to first increase Student's *** abilities before Student will be ready for ***.²³
17. In private *** Student made some progress in *** and is able to ***. ***. *** is going to be easier for Student and a lot quicker to learn than the *** required for the use ***. The private *** sessions include the use of highly motivating reinforcers and frequent breaks.²⁴ Ms. *** signed a consent form to allow the private *** to confer with Uplift but they have not yet connected.²⁵
18. *** (***) conducted a *** on June ***, 2016. Student has a ***.²⁶ Student's *** does not warrant an evaluation for possible *** because it falls within the normal range of ***

¹⁸ R. 3:22-23, 26-27, 35, 37, 40-41.

¹⁹ R. 4:1-2.

²⁰ P. D.; Tr. I:116, 121.

²¹ Tr. I:110, 113, 123-124.

²² P. D:1-27; Tr. I:111.

²³ Tr. I:112, 118-119.

²⁴ Tr. I:112-115.

²⁵ Tr. I:122, 159-160.

²⁶ P. M:1; Tr. I:119

according to the *** (***).²⁷

19. Student began attending Uplift on August 8, 2016 – the first day of school for the 2016-2017 school year.²⁸ Uplift is a non-profit public charter school network. Uplift operates seventeen campuses with thirty six schools in the Dallas area. Some campuses include a primary, middle, and a high school. The total student population in the Uplift network is 16,000 students. Student enrolled in the Uplift *** campus. The *** campus includes *** through *** grade. ***.²⁹
20. ***. The estimated total student population on the *** campus is *** students.³⁰ The *** campus is *** school. ***.³¹ The goal at Uplift is for every child in the Uplift “network” to graduate from high school under the graduation program that meets the child’s needs best, whether it is the minimum high school program or the recommended program. ***. Historically, Uplift has a successful graduation rate for all of its students, including special needs students.³²
21. Uplift offers various kinds of support to parents with special needs children who attend an Uplift campus. Resources may be recommended at an ARD meeting or in conversations with special education staff. Uplift also offers “Parent University” -- special training to all parents in the Uplift network. The content for Parent University is developed on the basis of parent surveys. Parent University is conducted across all seventeen of the Uplift campuses. Uplift also issues a monthly parent newsletter that includes updates and information about the overall Uplift network. The newsletter also offers suggestions and parenting tips on how to support a student through the academic process.³³
22. In 2015 Uplift ***. ***.³⁴ ***.³⁵ ***.³⁶
23. Uplift’s special education department is required to ***. Each special needs student must be served either in a *** classroom or in a pull-out special education classroom by Uplift special education staff.³⁷ The *** is not typically ***. Uplift’s ***.³⁸ ***.³⁹

²⁷ Tr. I:309; Tr. II:505, 514.

²⁸ P. I:1; Tr. II:384-385.

²⁹ Stipulation of Fact No. 1; Tr. I:287-288, 302; Tr. II:413, 418.

³⁰ Tr. II:403.

³¹ Tr. II:382-383.

³² Tr. II:390-392, 406.

³³ Tr. II:394-395.

³⁴ P. F: 3; P. Z: 2, 9; R. 13; Tr. I:275-276, 280; Tr. II:404-405.

³⁵ Tr. I:279, 281, 300-301.

³⁶ P. Z:1-8; Tr. I:295.

³⁷ Tr. II:401-402.

24. A “transfer ARD” convenes when a special education student transfers into the Uplift network. The IEP goals and objectives from the student’s prior school district are accepted by Uplift and implemented as closely as possible in a placement that approximates the previous placement for a thirty day period. Within that initial thirty days another ARD convenes to determine what works best for the student on the campus and revise the IEP as needed.⁴⁰
25. A transfer ARD for Student convened on August ***, 2016.⁴¹ At the transfer ARD Uplift accepted and adopted the *** IEP designed in May 2016. Uplift accepted Student’s eligibility for special education as a student with *** and ***.⁴² The IEP adopted and implemented by Uplift included IEP goals and objectives for reading (***), math (***), ***/***, *** (***), ***, and ***/***. Uplift *** to provide certain related services for special education students at Uplift. *** provides Student with *** services. The charter school reviewed the *** FIE and the *** IEE in adopting the *** IEP. The charter school began collecting data and preparing documentation as soon as Student began receiving special education services.⁴³
26. Each IEP included a set of measurable benchmarks or short-term objectives. Each IEP identified the staff required to implement each IEP, the method(s) of evaluation of Student’s progress towards the goals and objectives, and the frequency of IEP progress reports. The set of instructional accommodations, behavioral strategies, ***, and the use of assistive technology -- designed by *** -- were also adopted and implemented by Uplift.⁴⁴ There were no physical limitations on Student during ***. *** is not part of the curriculum at Uplift so *** was not provided. However Student participated in *** activities. Student’s participation in *** activities increased from “some of the time” in the first quarter grading period to “most of the time” by the second quarter grading period.⁴⁵
27. Ms. *** stated her concerns about Student’s *** needs and shared information regarding effective strategies and supports for Student at the transfer ARD. Student was initially placed in a **** program with *** in the general education *** classroom and *** in the special education *** classroom. The transfer ARD agreed on a *** and daily schedule for Student. Ms. *** received a copy of the Notice of Procedural Safeguards

³⁸ Tr. II:409.

³⁹ Tr. II:410.

⁴⁰ Tr. I:253-254.

⁴¹ R. 5; Tr. I:253-254.

⁴² R. 5: 1-4, 19; Tr. I:253-254.

⁴³ R. 5:5-14, 19; Tr. I:233-234, 251-252, 254, 315-316; Tr. II:483.

⁴⁴ R. 5:5-14, 19.

⁴⁵ R. 5:19; R. 11:50; Tr. I:235-236.

and provided consent for the provision of special education services.⁴⁶

28. Another ARD convened on August ***, 2016 and reconvened and was completed on August ***, 2016 (collectively the August 2016 ARD). The August 2016 ARD agreed Student continued to qualify for special education services as a student with *** and ***.⁴⁷ The August 2016 ARD considered Student's present levels of academic achievement and functional performance (PLAAFPs) in academics and in the functional areas of *** and ***. The impact of Student's disabilities on Student's involvement and progress in the general education curriculum were also considered by the August 2016 ARD.⁴⁸
29. IEP goals and objectives were designed and agreed upon for ***, ***, *** (***), academics (math and reading), and, ***. The location for implementation of each IEP, the level of mastery for each short-term objective, the evaluation procedures used to measure progress and the staff responsible for implementing each IEP were included in the IEP and ARD documents.⁴⁹
30. Student's PLAAFPs were specifically stated in the IEPs for ***, ***, *** but not in the reading and math IEPs. The *** IEP did not include a description of Student's PLAAFPs but did confirm Student's need for *** in the areas of *** and ***. However, Student's PLAAFPs in *** were noted elsewhere in the ARD paperwork and the *** IEP targeted development of ***. The charter school *** IEP was implemented through ***.⁵⁰
31. The August 2016 IEP also included the use of *** in all academic classes and a set of instructional supports including directions given in a variety of ways, the use of ***." ***. Ms. *** provided *** for use at school. The use of *** and *** were also included and implemented as *** supports for Student in the August 2016 IEP.⁵¹
32. *** ***.⁵² The special education teacher, the general education teacher, the aides, the *** assistant – anyone who worked directly with Student -- were all trained in *** during the school year.⁵³ The Uplift staff collaborated in collecting data on Student's use of the *** beginning on September ***, 2016. A data tracking sheet measures how effectively Student uses the *** ***.⁵⁴ Ms. *** received training on *** in July 2016 and advocated

⁴⁶ R. 5:19-21, 23.

⁴⁷ R. 6; Tr. I:254.

⁴⁸ R. 6:1-2, 5.

⁴⁹ R. 6:2, 8-15.

⁵⁰ R. 6:5, 8-15; R. 11:46; Tr. II:506-507, 515, 518, 520, 523, 542.

⁵¹ R. 6:16-17; Tr. I:202, 222-223.

⁵² Tr. II:459.

⁵³ R. 9; Tr. I:182, 201; Tr. II:465-466, 506-507, 515-517, 521, 529-530.

⁵⁴ R. 11:18; Tr. II:459, 468-469, 507-511.

for implementing the *** at the August 2016 ARD.⁵⁵ Ms. *** shared a *** *** with the charter school until January 2017 when the *** assistant created one to use at school.⁵⁶

33. There are several levels of mastery in the ***. Student made good progress in using the *** at the *** to increase Student's ***. At the time of the due process hearing Student was beginning to work at the *** ***.⁵⁷ Student now uses both *** to ***.⁵⁸ The ***. It will be appropriate for Student to advance to the use of a more complex *** once Student's mastered the *** ***. *** might be appropriate.⁵⁹
34. *** ***. *** ***.⁶⁰ Uplift provided Student with a *** this school year.⁶¹ Uplift implemented both the *** and *** during the 2016-2017 school year.⁶²
35. Ms. *** advocated teaching Student *** beginning with the transfer ARD on August ***, 2016.⁶³ In private *** Student recently learned *** and is currently working on *** ***." Student is also working on *** but requires ***.⁶⁴ An updated assessment by *** in October 2016 recommended considering teaching Student *** to facilitate ***. ***. The private *** plan in October 2016 did not specifically include teaching Student ***. The charter school employs ***** with Student in the general education classroom.⁶⁵
36. An ARD convened on September ***, 2016 (September 2016 ARD). A copy of procedural safeguards was provided to Ms. ***. A Review of Existing Evaluation Data (REED) was conducted that included parent information, student work portfolio, observations by staff and related service providers, and teacher interviews and surveys. The purpose of the ARD was to discuss the need for a Functional Behavior Assessment (FBA) to address behavioral concerns. Parental questions about the potential features and implementation of a Behavior Intervention Plan (BIP) and the purpose of the FBA were answered at the September ARD.
37. The ARD reached consensus and agreed to conduct the FBA within forty-five days and then design a BIP. Ms. *** signed the requisite informed consent for the FBA. Parental concerns about inclusion support, implementation of the *** at school,

⁵⁵ P. J: 22; R. 6:26, 29; Tr. II:517.

⁵⁶ R. 10; Tr. II:513, 522-523.

⁵⁷ R. 11:44-45, 63; Tr. II:509-513, 535-536, 538-539.

⁵⁸ Tr. I:205.

⁵⁹ Tr. I:117-118, 246; Tr. II:486.

⁶⁰ Tr. I: 293-294.

⁶¹ Tr. I:248-249; Tr. II:522.

⁶² R. 7:16; Tr. I:250.

⁶³ R. 5:19.

⁶⁴ Tr. I:113, 200.

⁶⁵ P. D:32; Tr. II:537.

- acquisition of ***, and staff training were addressed at the ARD. The ARD also explained to Ms. *** the set of accommodations and positive reinforcers being implemented at school. Ms. *** shared her insights and suggestions. A parental request for assignment of a dedicated *** was taken under advisement by the charter school pending the outcome of the FBA.⁶⁶
38. The IEP designed at the August 2016 ARD continued to be implemented by the charter school. *** and ***/*** services continued. Student's behavioral needs were addressed in the *** IEP and with behavioral strategies implemented as instructional accommodations. At the time of the September 2016 ARD Student was able to attend to task with a *** teacher-to-student ratio in a small space. Student enjoyed ***.⁶⁷ *** were added to Student's program. The *** training for the special education aides within two weeks of the ARD was implemented as agreed.⁶⁸
39. The FBA was completed on October ***, 2016. Behaviors of concern were Student's failure to consistently follow *** instructions and ***.⁶⁹ An ARD convened on November ***, 2016. A copy of procedural safeguards was provided to Ms. *** at the beginning of the ARD. The purpose of the November ***, 2016 ARD was to review the completed FBA and revise Student's IEP as needed.⁷⁰
40. The licensed specialist in school psychology (LSSP) who conducted the FBA did not recommend a BIP for Student at that time. Instead the LSSP recommended focusing on building Student's ***. A number of Student's behaviors were rooted in Student's ***. The LSSP recommended dedicating time each day to work solely on the *** which was not being done at the time. Many of Student's behaviors (such as ***) can be remediated if Student is able to *** no matter what methodology or strategies are used.⁷¹
41. ***. On one occasion, while in the special education *** class Student's behavior ***. ***. The LSSP recommended limiting transitions outside the classroom and focusing primarily on transitions within the classroom environment.⁷² *** occurred less frequently when related services were provided as "push in services" in the general education classroom. Student was progressing *** in the general education classroom.⁷³ Student was *** in the general education classroom.⁷⁴

⁶⁶ P. T:24-26, 30, 33-34; R. 7:31-42.

⁶⁷ R. 7:2, 8-16, 20.

⁶⁸ R. 7:2, 8-16, 20, 25-26.

⁶⁹ R. 8:42-47.

⁷⁰ R. 8:30.

⁷¹ R. 8:30, 47; Tr. I:165-167, 318; Tr. II:475-476, 481.

⁷² R. 8:30-31, 42-47; Tr. I:153.

⁷³ R. 8:30; Tr. I:153-154.

⁷⁴ R. 8:1, 30.

42. At the beginning of the school year Student had some ***. By the date of the due process hearing Student had not *** for the previous three months. Student also made progress in *** and academic skills. Student responded well to modeling by the teacher and progressed from *** in Student's development of ***.⁷⁵
43. The general education teacher conducts on-going assessments of Student's progress. By the due process hearing Student was making progress and acquiring skills in all areas including *** and ***. Student was making progress and doing well in the general education classroom.⁷⁶ Lessons in the general education classroom are modified by the general education teacher to meet Student's IEP goals. The general education teacher also implements the set of accommodations in Student's IEP.⁷⁷
44. The general education teacher implements *** for Student during the school day to support instruction, as a release from the demands of working, and to address Student's *** needs as a student with ***.⁷⁸ The general education teacher uses a *** with Student. Student is familiar with it and understands it most of the time. Student has reduced the time needed for ***.⁷⁹ Student is beginning to ***. ***.⁸⁰
45. The LSSP also recommended purchase of *** – a special curriculum for students with ***.⁸¹ *** has been implemented with success at other Uplift campuses for students with ***.⁸² *** uses *** to teach prerequisite skills for academic instruction within a classroom routine. *** utilizes one-step directions to meet the *** needs of *** classrooms. *** also employs the functional use of ***.⁸³
46. Charter school personnel recommended fulltime placement in the special education classroom where there was a smaller teacher-to-student ratio. Ms. *** opposed the recommended change in placement. Instead Ms. *** proposed Student remain in the general education classroom with the support of an aide.⁸⁴ Ms. *** also requested cameras be installed in the special education classroom. Charter school policy requires a request for video cameras be submitted in writing.⁸⁵ Neither the Uplift CEO nor the Director of Special Education are aware of any written request from Ms. *** for

⁷⁵ R. 11:67-68; Tr. I: 207-210.

⁷⁶ Tr. I:206-21; Tr. II:435-436, 442, 455-457, 464-465, 478, 510-511.

⁷⁷ Tr. I:182, 186-188, 199; R. 10.

⁷⁸ Tr. I:220-222.

⁷⁹ Tr. I:202, 211-212, 224.

⁸⁰ Tr. I:202, 223-224; Tr. II:460; R. 11:15-17, 21.

⁸¹ R. 8:47; Tr. I:160-161.

⁸² R. 7; Tr. I: 145, 241-242, 257-258.

⁸³ Tr. I:144.

⁸⁴ R. 8: 31-32; Tr. I:152

⁸⁵ R. 8:33; Tr. I:242-243.

installation of video cameras on the *** campus.⁸⁶

47. A revised set of IEP goals and objectives were presented and discussed at the November ***, 2016 ARD. A proposed IEP for behavior was discussed that addressed Student's need to learn ***. The proposed behavior IEP included the use of positive reinforcement and using *** and facilitate transitions.⁸⁷ Revised IEP goals and objectives in ***, and *** were proposed at the November ***, 2016 ARD. Ms. *** expressed concerns about the revised IEP goals and how data would be gathered in tracking Student's progress in meeting the new goals. Ms. *** disagreed with the proposed new IEPs.⁸⁸
48. The November ***, 2016 ARD recessed and reconvened on November ***, 2016. Ms. *** again received Notice of Procedural Safeguards and an ARD Guide. The discussion about placement continued. The ARD agreed to the parental request for full-time placement in the general education *** classroom. The charter school agreed to purchase and implement ***. The November ***, 2016 ARD reached consensus.⁸⁹ *** were added to the general education *** classroom. Special education aides provided Student with individualized inclusion support. The charter school trained the teachers and special education aides on ***.⁹⁰
49. The special education teacher collaborated with the general education teacher. Both teachers collaborated with the special education aides who provided the inclusion support in the general education *** classroom. The special education teacher met with the aides daily, sometimes twice a day, to talk about what was working or not working with Student, to implement new strategies, discuss interventions, and anything else that would assist Student in being successful in the classroom.
50. The special education teacher also monitored the aides in collecting ***.⁹¹ The special education aides received additional training from special education staff on behavioral strategies, ***, and additional *** training. The special education teacher prepared the IEP progress reports using data collected by the aides in the general education classroom. The general education teacher is aware of Student's ability using the ***.⁹² Instruction is provided to Student by both the general education teacher and the special education aides.⁹³

⁸⁶ Tr. I:243; Tr.II:407-408

⁸⁷ R. 8:7-8.

⁸⁸ R. 8:7-12, 30-31.

⁸⁹ Tr. I:196; R. 8:34-35.

⁹⁰ Tr. I:195, 264; R. 8:34-36, 40-41.

⁹¹ R. 9; Tr. I:196; Tr. II:458-459.

⁹² Tr. I:210-211.

⁹³ Tr. I:186-190, 217.

51. The *** collaborated with the teaching staff including monitoring and supervising the aides in using the *** with Student. The *** met weekly with the aides and reviewed the *** and Student's progress.⁹⁴ She provided overview training to the teachers and aides who work directly with Student on how to implement the ***.⁹⁵ She monitored, supervised and supported the *** assistant in the implementation of the *** IEP, the ***, and *** collection. They met weekly. The *** assistant worked collaboratively with the aides to implement the ***.⁹⁶
52. Although Ms. *** signed a consent form to allow the private *** at *** to confer with Uplift attempts to connect with the *** *** were not successful.⁹⁷ The *** collaborated with Student's teachers and other school staff. A second *** took over in mid-September and continued the collaboration with the teachers and other staff in implementing Student's *** IEP.⁹⁸
53. The general education *** classroom teacher and special education teacher were both trained on *** in January 2017.⁹⁹ They began implementing the curriculum thereafter. *** emphasized teaching basic skills through assessment. Each lesson is based on an assessment score. For example, the general education teacher uses *** to teach Student to ***. Data is collected and measures how long it takes for Student to respond. Student's behavior improved and Student is responding well to ***.¹⁰⁰
54. Uplift requires *** *** to be certified.¹⁰¹ Uplift also requires its teachers to maintain their teacher certifications during their entire tenure of employment, including special education teachers.¹⁰² Instructional aides are not required to be certified. However, all charter school personnel involved in Student's education, including classroom aides, are all duly certified. This includes the LSSP who conducted the FBA, the ***, the ***, and the *** assistant.¹⁰³ The *** general education *** teacher is currently working on her Texas teaching certificate and a Master's degree in ***. She has a B.S. in Child Development and 4-5 years' experience teaching ***.¹⁰⁴

⁹⁴ Tr. II:532.

⁹⁵ Tr. II:506-507.

⁹⁶ R. 11:63; Tr. II:528-529, 530-531.

⁹⁷ Tr. I:122, 159-160; Tr. II:533.

⁹⁸ Tr. II:432, 436-437, 443, 445-447.

⁹⁹ Tr. I:195; Tr. II:486.

¹⁰⁰ Tr. I:204-205.

¹⁰¹ Tr. I:267.

¹⁰² Tr. II:384, 386.

¹⁰³ R. 12; Tr. II:387.

¹⁰⁴ Tr. I:178-179, 198, 271; R. 12:14-15.

55. The need for in-home or parent training was not requested by Ms. *** at any of the ARD meetings during the current school year.¹⁰⁵ None of the evaluations conducted within the past two years recommended in-home or parent training.¹⁰⁶ IEP progress reports from teachers and related service providers, *** monitoring, additional reports from the special education teacher, and *** report cards were provided to Ms. *** throughout the current school year.¹⁰⁷

VI. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free, appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. *20 U.S.C. § 1400(d)*. The charter school has a duty to provide FAPE to all children with disabilities ages 3-21 who are enrolled in the charter school. *34 C.F.R. § 300.101(a)*; *Tex. Educ. Code § 12.012(a)(3)*. The evidence showed Student was a child with a disability duly enrolled in the charter school. The charter school had the duty to serve Student under specially designed personalized instruction with sufficient support services to meet Student's unique needs in order for Student to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. *20 U.S.C. § 1401(9)*; *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, *458 U.S. 176, 188-189, 200-201, 203-204 (1982)*.

B. IEP

In meeting the obligation to provide FAPE charter school must have in effect an IEP for each child with a disability at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the

¹⁰⁵ R. 5; R. 6; R. 7; R. 8.

¹⁰⁶ P. N; P. O; P. M; R. 1; R. 2; R. 8:42-47.

¹⁰⁷ R. 11.

IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, and the duration and frequency of the services and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). FAPE is determined on the basis of the overall educational benefit provided to Student through implementation of the IEP. See, *Klein Ind. Sch. Dist. v. Per Hovem*, 690 F. 3d 390, 397-398 (5th Cir. 2012).

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.¹⁰⁸ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case the charter school district was obligated to provide Student with FAPE during the current 2016-2017 school year. The burden of proof in this case is on Petitioner to show the charter school did not do so. *Id.*

In addition, Petitioner seeks private placement at charter school expense. The burden of proof remains on Petitioner to show not only that the charter school failed to provide Petitioner with FAPE but that the private placement chosen by the parent is appropriate. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370(1985).

D. *** Issue

Petitioner contends the charter school failed to provide Ms. *** with notice that *** was unable to provide Student with special education services in the *** program. The evidence showed the charter school ***. Furthermore, special education services were provided to Student to support Student's inclusion in the *** program.

The evidence showed the charter school was responsible for and did provide special

¹⁰⁸ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009).

education services to Student with its own special education staff and related service providers. The special education staff and related service providers worked collaboratively with the *** general education teacher in providing the instruction and services Student needed under Student's IEP. Therefore, there was no "notice" required to the parent that special education was not being provided in the *** class because it was provided.

E. IEP Goals and Objectives Issues

Petitioner contends Student did not meet Student's IEP goals and objectives in ***, ***, or academics. The evidence showed that Student met some of the IEP goals and objectives, has not yet mastered others, and is making progress towards others.

Petitioner also contends the charter school unilaterally revised Student's IEP goals and objectives when Student failed to master or meet them. The evidence showed that some of Student's IEP goals and objectives were revised to better meet Student's needs. The evidence showed revised IEP goals and objectives were proposed and discussed in ARD meetings where parental concerns were expressed and considered. The evidence showed Ms. *** ultimately agreed with the set of revised IEPs at the November ***, 2016 ARD. Petitioner did not meet Petitioner's burden of proving IEP goals and objectives were unilaterally revised outside the ARD process or without parental input or that the revised IEP goals were somehow not appropriate.

F. Staff Training

Petitioner contends charter school staff lacked sufficient training in teaching Student *** – a *** Petitioner contends Student needs. Petitioner also contends charter school staff lacked sufficient training in teaching Student ***. The evidence shows charter school staff are not particularly skilled in the ***. However, Petitioner did not prove Student needs *** over other methodologies in order to ***. The evidence showed *** requires *** and Student's *** are still developing. Even the private *** did not focus on teaching Student *** but instead addressed Student's ***, teaching only *** at a time. Given Student's *** Student will learn

*** more quickly with strategies that use ***, as opposed to *** skills.

Petitioner did not prove *** was either Student's *** or that it was the only method of *** appropriate for Student. The evidence shows the charter school used other *** (such as the ***, the ***, and ***) to support the development of Student's ***. The evidence showed that all charter school staff who worked directly with Student had sufficient training in teaching Student ***.

Petitioner argued the charter school should have used the same *** methodology employed by Student's private *** to address Student's needs associated with Student's ***. The charter school used other methodologies including *** and *** to teach Student how to use ***. It is well settled that the choice of methodology falls within the sole discretion of the charter school. Parental preference, no matter how well intended, does not compel a charter school to utilize a specific methodology. *See, M.M. and B.M. ex. Rel. C.M. v. Sch. Bd. of Miami-Dade Fla.*, 437 F. 3d 1085, 1102 (11th Cir. 2006); *Lachman v. Illinois Bd. of Educ.*, 852 F. 2d 290, 297 (7th Cir. 1988).

G. * Training for Student and Parent**

The evidence does not support the use of *** training as Student's ***. Certainly the use of *** that Student learns in school can be reinforced at home to ensure consistency of instruction in ***. In that regard it makes sense for the charter school to provide Ms. *** with some training in *** charter school staff are teaching to Student. However, Petitioner failed to meet Petitioner's burden of proving that Student needs *** in order to receive an educational benefit.

H. ***

The evidence established Student is receiving appropriate *** as a support service at school. The evidence showed the charter school attempted to use appropriate *** to encourage the development of Student's *** and ***. By November 2016 the charter school added the use

of ***. The evidence showed charter school staff need to assess Student's use of *** to determine its effectiveness in supporting Student's *** and acquisition of learning.

I. Behavior Plan

Petitioner contends Petitioner needed a BIP as a component of Petitioner's IEP and that the charter school failed to implement a BIP this school year. The evidence showed there were a number of behavioral strategies implemented throughout the school year that addressed Student's behavioral needs. The evidence showed Student's behavior was a *** and Student's *** triggered some challenging behaviors in the classroom. The FBA recommended development of Student's *** and the use of positive reinforcement over punitive behavioral interventions. The evidence also showed the charter school designed a Behavior IEP that followed the FBA recommendations and addressed Student's needs to develop ***.

Transitions and academic tasks Student found difficult were identified as triggers for challenging behavior. In response, the charter school reduced the number of transitions required of Student – in part by reducing the transition between the special education and general education classes when the charter school agreed with the parental request for full time placement in the general education class. Therefore, the Behavior IEP goals and objectives that focused on teaching Student ***, along with reduction in transitions between classrooms, met Student's behavioral needs without the need for a formal BIP.

The evidence showed Student's *** were more frequent at the beginning of the school year when Student was transitioning into the charter school and then again when Student was transitioning from the self-contained special education classroom to the regular education *** classroom. The evidence also showed that as Student became acclimated to the charter school environment the frequency *** decreased. The evidence showed Ms. *** was contacted once about *** that occurred early in the year. A single behavioral incident does not lead to the conclusion that the charter school failed to meet Student's behavioral needs or that Student needed a formal BIP.

J. ***

Petitioner contends Student needs training in the use of the *** and that the charter school failed to provide it. Ms. *** advocated the use of the *** at the beginning of the year, shared *** materials with the charter school, and made suggestions on the use of the *** in the *** classroom. The evidence showed that in response to parental requests the charter school trained all charter school staff who worked directly with Student on the use of the ***. The evidence also showed the *** was used in the delivery of Student's related services.

Student is beginning to respond to the use of *** and it is proving effective in supporting more appropriate behavior in the classroom. The charter school responded to the parental request to employ the use of ***. The evidence showed the charter school followed the recommendations of the FBA and set aside a specific period of time each day to work on teaching Student the *** along with using *** throughout the school day.

K. In-Home and Parent Training

There was very little evidence, if any, that Petitioner needs in-home or parent training. None of the evaluations conducted by independent, public school district, or charter school evaluators recommended in-home or parent training. There is no evidence Ms. *** ever discussed, raised concerns, or requested in-home or parent training at ARD meetings. In fact, the evidence showed quite the contrary – Ms. *** was very aware of numerous supports, strategies, and methodologies that she thought would benefit Student at school and clearly advocated for their consideration and was often successful in doing so. Ms. *** is ***. She shared her ideas and suggestions at numerous ARD meetings.

The evidence showed there is some collaboration between home and school with regard to the use of ***. It makes sense for the charter school and the parent to work a bit more closely together to ensure consistency between home and school in Student's acquisition of *** and as Student moves through the *** levels. In that regard some degree of parent training would be helpful to ensure Ms. *** can reinforce at home the *** and the *** training Student is receiving

at school. Periodic parent-teacher conferences or written communications between home and school can fulfill this function. Ensuring clear communication between home and school might reduce confusion or parental anxiety over Student's pathways to learning.

L. ***

The evidence showed the charter school is implementing *** following the recommendation of the FBA and as a result of the consensus reached at the November ***, 2016 ARD meeting. The evidence suggests Student began to make progress last fall, without implementation of this particular curriculum, as Student became acclimated to Student's new campus and classrooms. The evidence also shows implementation of *** is appropriate for Student and gives the regular education teacher (with the inclusion support of the special education aides) an instructional road map based on assessment to follow in meeting Student's needs.

M. Failure to Document Activities and IEP Progress in Special Education Classroom

Petitioner complains the charter school failed to properly document Student's daily activities or collect proper data to show Student's progress towards meeting IEP goals and objectives. The evidence showed Student was in the special education classroom for less than *** and for only *** during that time. The evidence shows data was collected by regular and special education staff as well as related service providers. There is nothing in the IDEA that requires a certain level or type of documentation be collected.

N. Change in Special Education Placement Based on Parental Request for Installation of Video Cameras

Petitioner contends the charter school unilaterally changed Student's placement from the special education classroom into the general *** classroom because Ms. *** requested the installation of video cameras in the special education classroom. The inference from Petitioner's argument is that the charter school made an improper placement decision because it wished to

avoid incurring the expense of video camera installation rather than considering Student's needs. There was very little, if any, evidence to support such an inference.

The evidence showed placement decisions were not made in response to a parental request for installation of video cameras in the special education classroom. Instead, the evidence showed charter school staff recommended full time placement in the special education classroom because it would provide Student with a smaller instructional setting and a smaller teacher to student ratio that would meet Student's needs. Student's mother advocated the opposite – fulltime placement in the general education *** classroom.

The evidence showed the charter school ultimately agreed to the parental request for fulltime placement in the general education *** classroom at the November ***, 2016 ARD, not because it wished to avoid installation of a video camera in the special education classroom, but because the ARD designed strategies to support Student's inclusion.

There is some evidence Student's mother requested video cameras in the special education classroom at the November ***, 2016 ARD meeting. The evidence also showed Ms. *** apparently never followed up with a written request to charter school leadership per charter school policy. Beginning with the 2016-2017 school year a parent may request the installation of a video camera on a public charter school campus serving a special needs student in a self-contained special education classroom or other special education setting. *Tex. Educ. Code § 29.022; 19 Tex. Admin. Code § 103.1301(a)*.

Each public school district's board of trustees or the governing body of an open-enrollment charter school must adopt written policies relating to video surveillance under state law. The written policies must include the procedures for requesting video surveillance and the procedures for responding to a request for video surveillance. *19 Tex. Admin. Code § 103.1301(g)(2)*. The evidence showed that although Ms. *** expressed a request for installation of video cameras in an ARD meeting the charter school's policy required a written request for installation of video cameras. Petitioner did not meet Petitioner's burden of proving placement decisions were made in response to a parental request for installation of video cameras

in the special education setting.

VII. FAPE

A. The Four Factors Test

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

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

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program for reimbursement purposes. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). Application of the four factors to the evidence in this case supports the conclusion that the charter school's program was appropriate and provided Student with FAPE.

B. Individualized on the Basis of Assessment and Performance

First, the evidence showed the charter school district's program was individualized on the basis of assessment and performance. The charter school reviewed the *** FIE and the *** IEE as well as teacher observations and student performance in adopting the ***. Additional data, including classroom performance, was used to revise Student's IEP to better meet Student's *** and behavioral needs. The evidence showed that with the implementation of *** the *** lessons

taught in the general education *** classroom are based on on-going teacher assessment. The implementation of the *** is also evaluated on a regular basis by the *** assistant supervised and mentored by the ***. Data is collected on a regular basis to determine the effectiveness of *** so that adjustments can be made. Student's PLAAFPs were identified and used in designing Student's IEPs.

The charter school is implementing the use of *** and evaluating whether it is an effective *** for Student this year. The charter school's FBA identified the function of Student's challenging behaviors. Student's IEPs were then revised to focus on the development of *** as recommended by the FBA. The adoption of *** was also implemented on the basis of a recommendation in the FBA. The charter school also implemented a specific time out of each school day to work on the *** on the basis of the FBA. Overall, the IEP goals and objectives implemented by the charter school addressed Student's needs, as identified by the various assessments, in developing Student's ***, ***, and academic readiness skills.

C. Least Restrictive Environment

Second, the evidence showed the charter school district's program was delivered in the least restrictive environment. For the first few months Student was educated in a mix of special education and general education *** classrooms getting both the specialized instruction Student needed from the special education class and opportunities to access the general *** curriculum with Student's non-disabled peers. By November 2016 Student's placement was changed to full-time in a general education *** classroom with inclusion support from special education. This evidence meets the IDEA's preference for educating children with disabilities to the maximum extent appropriate with their non-disabled peers. *34 C.F.R. § 300.114.*

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

Third, the evidence showed the services were provided in a coordinated, collaborative manner by key stakeholders. The charter school was receptive and often agreed to parental requests, materials, supports, ideas, and suggestions, including ordering certain kinds of

equipment, devices, and curriculum materials. Home and school shared *** until the charter school prepared its own *** for use at school. The special education teacher collaborated with and supervised the special education aides who provided inclusion support in the general education *** classroom. The special education teacher gave Student Student's grades based on Student's work in the general education *** classroom.

Related service personnel and the LSSP provided consultative services to the charter school instructional staff as well as specific training in the *** and ***. The *** supervised, monitored, and collaborated weekly with the *** assistant on implementation of the *** IEP. Finally, the charter school and *** collaborated in providing Student the special education services and the *** regular education curriculum Student needed ***.

E. Academic and Non-Academic Benefit

Fourth, the evidence showed Student received the requisite educational benefit from Student's IEP given Student's unique circumstances. The number *** at school decreased and eventually disappeared as Student became acclimated to the charter school, Student's classrooms, and began to learn ***. The evidence showed Student initially ***. However as Student began to learn ***, and as charter school staff got to know Student better, the *** behavior significantly decreased and ultimately disappeared.

Student began to learn and exhibit ***, ***, ***, and improved behavior. Student made excellent progress working through *** and made progress on many of Student's IEP goals and objectives. The IDEA does not require the IEP to guarantee a certain level of accomplishment – only that the IEP is reasonably calculated to meet the student's needs given Student's unique circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist., No. 15-827, 2017 WL 10662601@ *10 (Mar. 22, 2017).*

Petitioner did not meet Petitioner's burden of proving the charter school's program failed to provide Student with FAPE. *Schaffer v. Weast, supra.* The charter school district's program

was reasonably calculated to provide Student with the requisite educational benefits and was therefore appropriate. *Rowley v. Bd. of Educ. of Hendrick Hudson Int. Sch. Dist.*, *supra*. The charter school is not required to provide Student with the best possible education. Student does not need to improve in every academic and non-academic area to receive an educational benefit. The issue is not whether the charter school could have done more. Instead, the inquiry is whether Student received an educational benefit. *Houston Ind. Sch. Dist. v. V.P.*, 582 F. 2d 576, 590 (5th Cir. 2009). The evidence showed Student did.

F. Private Placement at Charter School Expense

Student must meet a two part test in order to secure private placement at charter school expense. First, Student must prove the charter school district's program was not appropriate under the IDEA. Second, Student must prove the proposed private placement is appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370(1985); *Florence Cnty. v. Carter*, 510 U.S. 7 (1993).

In this case the charter school district's program is appropriate and provided Student with FAPE in the least restrictive environment. Student made educational progress given Student's unique circumstances and was educated with non-disabled peers to the maximum extent appropriate. 34 C.F.R. §300.114. Therefore, there is no need to consider whether Student met the second prong of the private placement test. When the charter school's program is appropriate Student is not entitled to private school placement at charter school expense. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. at 370. Even if the charter school's program was not appropriate there was no evidence produced by Petitioner that identified or described an appropriate private placement. Petitioner did not meet Petitioner's burden of proof on this issue. *Schaffer v. Weast*, *supra*; *Burlington Sch. Committee*, *supra*.

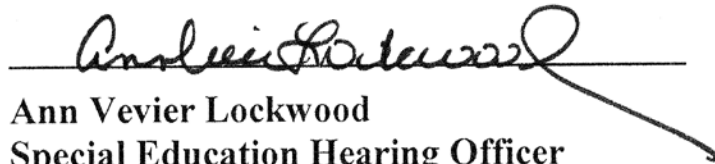
VIII. CONCLUSIONS OF LAW

1. Petitioner did not meet Petitioner's burden of proving the charter school's IEP was not appropriate. The IEPs implemented during the 2016-2017 school year provided Petitioner with the requisite educational benefit given Petitioner's unique circumstances. *20 U.S.C. § 1401(9); Andrew F. v. Douglas Cnty. Sch. Dist., No. 15-827, 2017 WL 10662601@ *10 (Mar. 22, 2017); Schaffer v. Weast, 546 U.S.49 (2005); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982); Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F.3d 245, 253 (5th Cir. 1997).*
2. Petitioner is not entitled to private placement at charter school expense. *Burlington Sch. Committee v. Dept. of Educ., 471 U.S. 359(1985); 34 C.F.R. § 300.148.*

ORDER

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

SIGNED April 21, 2017.


Ann Vevier Lockwood
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

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