

TEA DOCKET NO. 092-SE-1216

STUDENT	§	BEFORE A SPECIAL EDUCATION
BNF PARENT & PARENT	§	
Petitioner	§	
v.	§	HEARING OFFICER FOR THE
	§	
RIESEL 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 Education Improvement Act (IDEA), 20 U.S.C. §1400 *et seq.* Riesel Independent School District (Respondent or the District) is the Respondent to Petitioner’s complaint. Petitioner alleges that the District deprived Student of a Free Appropriate Public Education (FAPE) during the 2015-2016 and 2016-2017 school years.

PROCEDURAL HISTORY

Petitioner filed the complaint with the Texas Education Agency (Agency) on December 28, 2016, and the case was assigned to this Hearing Officer on December 29, 2016. This Hearing Officer issued an order establishing the procedural schedule on December 29, 2016, and set the hearing for February 14, 2017. The initial prehearing conference in this matter convened on January 20, 2017, at which time it was determined that 2 days would be required for the hearing. The hearing was continued and rescheduled for April 6 and 7, 2017.

On March 20, 2017, a prehearing conference was convened. The hearing was rescheduled for May 1 and 2, 2017. The relevant time period for this case was established as December 28, 2015 to the present, and ongoing.

By order dated March 21, 2017 Petitioner's claim for relief arising under Section 504 of Rehabilitation Act of 1973, the Americans With Disabilities Act and Petitioner's claim for relief for attorney fees were dismissed for want of jurisdiction.

The hearing convened on May 1 and 2, 2017, at the Riesel ISD Board Room located at 600 E. Frederick, Riesel, Texas. Sonja Kerr and Elizabeth Angelone represented Petitioner. Gigi Driscoll and Jennifer Carrol represented Respondent.

ISSUES FOR THE HEARING AND REQUESTED RELIEF

A. Issues

During the March 20, 2017 prehearing conference in this matter, Petitioner identified the following broad issues for resolution at the hearing:

1. Whether Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 school years, resulting in denial of a FAPE for Student.
2. Whether Respondent failed to properly provide Student with a FAPE with the meaning of the IDEA during the 2015-2016 and 2016-2017 school years.
3. Whether Respondent failed to provide Petitioner's parent prior written notice (PWN) pursuant to the IDEA, during the 2015-2016 and 2016-2017 school years, resulting in denial of a FAPE for Student.
4. Whether Respondent failed to educate Student in the least restrictive environment (LRE) during the 2015-2016 school year, resulting in denial of a FAPE for Student.

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

1. Whether Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 school years, resulting in denial of a FAPE for Student:
 - a. Did Respondent fail to properly evaluate Student for ***.
 - b. Did Respondent fail to properly evaluate Student for assistive technology needs.

- c. Did Respondent fail to properly evaluate Student in all areas of suspected disability and need, or incorrectly evaluate Student in the areas of cognitive/ academic, behavior, assistive technology, and ***.
2. Whether Respondent failed to provide Student with a FAPE within the meaning of the IDEA during the 2015-2016 and 2016-2017 school years.
 - a. Did Respondent fail to provide Student services for ***.
 - b. Did Respondent fail to properly write Present Levels of Performance and goals and objectives in meaningful and measurable ways to accurately track progress.
 - c. Did Respondent fail to track Student's progress and goals and objectives during the 2015-2016 school year, and/or did Respondent fail to provide Student's parent with progress reports on the one goal and four objectives.
 - d. Did Respondent fail to provide Student with an appropriate individualized program of education that permitted Student to receive meaningful benefit, rather than de minimus or trivial educational advancement.
 - e. Did Respondent fail to consider and ensure positive behavioral support programming for Student.
 - f. Did Respondent fail to provide assistive technology devices for Student.
 - g. Did Respondent fail to provide Student with *** in accordance with the IDEA requirements.
 - h. Did Respondent fail to provide Extended School Year (ESY) services for Student during the summer of 2016.
 - i. Did Respondent fail to provide Student with instruction and strategies based on peer-reviewed research based educational programming practices designed to meet Student's individual needs.
3. Whether Respondent failed to provide Student's parent prior written notice (PWN) pursuant to the IDEA during the 2015-2016 and 2016-2017 school years, resulting in denial of a FAPE for Student.
4. Whether Respondent failed to educate Student in the least restrictive environment (LRE) during the 2015-2016 school year, resulting in denial of a FAPE for Student.

B. Requested Relief

During the March 20, 2017 prehearing conference, Petitioner requested that the Hearing Officer order the following relief:

1. An Order that Respondent provide an appropriate educational placement for Student to include intensive *** instruction, and provide intensive *** instruction by a *** (***).
2. An Order that Respondent conduct evaluations in all areas of disability and need including a Functional Behavioral Assessment (FBA), assistive technology evaluation, cognitive/academic, and ***.
3. An Order that Respondent provide compensatory services to compensate for the amount of deprivation.
4. An Order that Respondent reimburse Parents for privately obtained tutoring services.
5. An Order that Respondent reimburse Parents for out -of -pocket expenses for the 2015-2016 school year or alternatively, provide Student with compensatory educational services, in an amount to be determined, for the failure to provide Student with an appropriate program during the years disputed herein.
6. Any other additional relief that may be appropriate and necessary to ensure that Student is provided with a free, appropriate public education including transportation or transportation costs to any services deemed appropriate by the Hearing Officer.

STIPULATION

The parties agreed that Respondent granted the parents' request for a speech and language IEE.¹

FINDINGS OF FACT

Based upon the evidence presented at hearing that pertains to the above listed issues pled by the parties, 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, and "RE" for Respondent, followed by the exhibit number.

1. The District is responsible for the provision of special education services

¹ Tr. at 74.

to Student who resides within its geographical boundaries.

2. During the 2015-2016 and 2016-2017 school years, Student was in the *** and *** grades respectively.

3. During the 2015-2016 and 2016-2017 school years, Student's eligibility classification was specific learning disability (SLD).²

4. ***, the special education teacher, served as the monitor of all special education and Section 504 students. Between the years 2012 and 2016, none of Student's teachers expressed any concerns to her regarding Student's academic and behavioral functioning in school, nor did Student's parents communicate a request for an evaluation for special education.³

5. Student's *** teacher, Mr. ***, ***.⁴ This teacher testified that from 2014 to 2016, Student did not present with any behavioral problems in his classroom. Student's only reported behavioral incident in his class occurred in January 2017 when Student ***.⁵ The teacher testified there was never a reason to suspect Student had a disability, and testified that Student was very good at ***, got along with Student's peers, did not have problems in social skills, attended to the task-at-hand, and communicated well. He has a good relationship with Student.⁶

6. During the 2012-2013 school year, Student passed the *** state assessment, passed the *** state assessment, and came close to achieving a passing score on the *** state assessment.⁷

7. During the 2013-2014 school year, Student passed the *** state assessment and exceeded the progress measure. Student passed the *** state assessment and met the progress measure. Student passed the *** state assessment,

² RE3 at 42; RE7 at 1.

³ Tr. at 261-262.

⁴ Tr. at 615 and 624.

⁵ Tr. at 617-619.

⁶ Tr. at 622.

⁷ RE8 at 1.

but did not pass the *** state assessment.⁸ Only ***% of students in the state passed the *** that year.⁹

8. During the 2014-2015 school year, Student failed the *** state assessment by a few questions.¹⁰ Student did pass the *** and *** state assessments.¹¹

9. During the 2015-2016 school year, Student took the *** state assessment again and failed it by a few questions; however, Student passed it in the spring of 2016.¹² When Student passed the *** state assessment, only ***% of students in *** passed it.¹³

10. During the spring of 2016 Student took the *** state assessment and failed it by a few questions. Student did meet the progress measure.¹⁴ In the summer of 2016, Student passed the *** state assessment.¹⁵

11. Petitioner called Dr. *** as a witness. Dr. *** is a licensed specialist in school psychology (LSSP) and a licensed psychological associate.¹⁶ Dr. *** testified that Student is *** grade level.¹⁷ However, Student has passed the *** and *** state assessments, which include *** *** on a *** and *** grade levels.¹⁸ Further, these assessments, which Student passed, showed Student's *** skills to be at the *** and *** grade levels, respectively.¹⁹

12. Student's passing of the *** state assessment, which assesses Student's *** skills on a *** grade level, showed that Student's *** skills are commensurate with Student's grade level.²⁰

⁸ RE8 at 2-3.

⁹ RE13 at 3.

¹⁰ RE8 at 4.

¹¹ RE8 at 5.

¹² RE8 at 7- 8.

¹³ RE13 at 11; Tr. at 716-718.

¹⁴ RE8 at 9.

¹⁵ RE8 at 10.

¹⁶ Tr. at 308-309.

¹⁷ Tr. at 370.

¹⁸ Tr. at 718.

¹⁹ Tr. at 718-719.

²⁰ Tr. at 719-720.

13. The District provided Student's parent with notice and consent to conduct a full and individual evaluation ("FIE") for Student on March ***, 2016, and Student's parent signed such consent in response to a parental request to evaluate.²¹

2016 FIE and IEP

14. The District completed the initial FIE for Student on May ***, 2016.²²

15. Parent obtained a private evaluation from Dr. *** for Student in 2009.²³ Parent did not provide a copy of that evaluation to the District until 2016.²⁴ The District evaluator considered the report as part of the 2016 FIE.²⁵ The evaluator in the 2009 report did note Student's test results were inconsistent with a diagnosis of attention deficit and hyperactivity disorder ("ADHD").²⁶ Student was not enrolled in the District at the time of this 2009 evaluation.²⁷

16. The District's 2016 FIE included a variety of sources of information and data.²⁸

17. During the FIE evaluation Student did not present with expressive or receptive language deficits, and Student's language skills appeared adequate for performing academic tasks in the classroom.²⁹

18. When completing the FIE, the Educational Diagnostician *** gathered information from Student's teachers regarding Student's language skills.³⁰ He also administered the Woodcock-Johnson IV Test of Oral Language and obtained numerous cluster scores.³¹ The Speech and Language Pathologist ("SLP") consulted with the Diagnostician on the assessment results. They agreed that additional assessment in

²¹ RE1.

²² RE3.

²³ PE1.

²⁴ Tr. at 134-135.

²⁵ RE3 at 2.

²⁶ PR1 at 3.

²⁷ Tr. at 135.

²⁸ RE3.

²⁹ RE3 at 8.

³⁰ RE3.

³¹ RE3; Tr. at 529-530.

speech and language was not warranted at that time. Student's language scores reflected adequate language skills to function in a regular classroom.³²

19. The FIE report notes that Student's fine and gross motor skills were within normal limits.³³

20. The Diagnostician contacted a physician whom the parent had reported diagnosed Petitioner with ADHD. However, the physician reported he had not diagnosed Student with ADHD.³⁴ Based on information provided by Student's teachers there were no reasons to suspect Student was a student with An Other Health Impairment (OHI) based on ADHD.³⁵ The 2009 evaluation report from Dr. *** also reported Student did not appear to present with ADHD.³⁶

21. The 2016 FIE included a review of Student's discipline reports.³⁷ The discipline reports did not indicate any significant emotional/behavioral problems that would warrant a psychological evaluation.³⁸ Student did not present any behaviors during testing which would be indicative of an emotional or behavioral disorder, nor did Student present with any significant emotional or behavioral factors that adversely affected Student's learning process, nor did the information in the classroom observation indicate a need for additional emotional and/or behavioral assessment.³⁹ Although the Diagnostician had the 2009 evaluation from Dr. ***, he did not request a psychological evaluation for Student. The Diagnostician considered the testing and the information from the Student's teachers that Student's behavior as a whole did not indicate that Student was having significant emotional/behavioral difficulties in school.⁴⁰

22. The Diagnostician administered a comprehensive cognitive assessment to identify Student's areas of cognitive processing deficits.⁴¹

³² RE3 at 8.

³³ RE3 at 10.

³⁴ RE2; RE3 at 10; Tr. at 516.

³⁵ Tr. at 520.

³⁶ PE1.

³⁷ RE3 at 14.

³⁸ Tr. at 544-548.

³⁹ RE3 at 15.

⁴⁰ Tr. at 521-526, 541-544.

⁴¹ RE3 at 15-22.

23. Student's cognitive functioning was consistent with Student's adaptive behavior.⁴² According to teacher information and informal assessment, Student met the standards of personal independence and social responsibility of Student's age and cultural group.⁴³ Student's global intellectual score was within the low range due to Student's substantially lower scores on weighted sub-tests.⁴⁴

24. Student scored within the average range on the cluster score of comprehension knowledge, which measures language and requires verbal directions and responses.⁴⁵

25. The Diagnostician assessed Student's adaptive behavior skills to be within normal limits.⁴⁶

26. The Diagnostician considered information regarding Student's performance on state assessments over time and grades, as well as information from teachers regarding Student's academic performance.⁴⁷ The Diagnostician administered comprehensive achievement assessments to Student and provided very detailed information in the FIE regarding Student's academic strengths and weaknesses.⁴⁸ Student presented with deficits in the areas of ***, ***, and ***.⁴⁹

27. Based on informal assessment data, Student did not present with a need for assistive technology.⁵⁰

28. The Diagnostician concluded that Student met the disability criteria for a specific learning disability (SLD).⁵¹ More specifically it was determined that Student met the eligibility for special education services as a student with a SLD in the areas of ***, ***, and ***.⁵² The assessment confirmed weaknesses in ***, ***, and ***.⁵³ Student did

⁴² RE3 at 22.

⁴³ RE3 at 22.

⁴⁴ RE3 at 22; Tr. at 563-568.

⁴⁵ Tr. at 550-551.

⁴⁶ RE3 at 22.

⁴⁷ RE3 at 22-25.

⁴⁸ RE3 at 26-36.

⁴⁹ RE3 at 37.

⁵⁰ RE3 at 37; Tr. at 577-578.

⁵¹ RE3 at 42.

⁵² PE3 at 38.

⁵³ RE3 at 41.

not present with a learning disability in ***, which would have been indicative of possible
***.⁵⁴

29. The District convened an initial Admission, Review, and Dismissal Committee ("ARDC") meeting for Student on May ***, 2016, and recommended Student met eligibility as a student with a SLD.⁵⁵

30. The individual education program ("IEP") for Student included detailed present levels of performance data; including a review of Student's performance on state assessments, information from the FIE, grades from the previous and current school year, detailed information from teachers regarding Student's classroom behavior, and detailed academic information from Student's teachers.⁵⁶

31. The IEP included measurable goals for *** and ***.⁵⁷ Student's goals were on grade level with lower prerequisite skills in the objectives to support the grade level goal.⁵⁸ The District developed the goals based on Student's present levels of performance data, including areas of weakness on the state assessments.⁵⁹

32. Student's IEP included *** in compliance with the IDEA.⁶⁰ The District proposed the *** based on ***, as well as a variety of other sources of information.⁶¹ Based on this assessment data, the *** included the *** goals of ***.⁶²

33. Petitioner engaged *** from *** to provide a *** *** for Student.⁶³ Mr. *** testified that Student's *** goals were measurable.⁶⁴

34. Student's *** teacher, ***, believes these *** goals are appropriate for Student based on his knowledge of Student and others ***.⁶⁵

⁵⁴ Tr. at 694-695.

⁵⁵ RE4.

⁵⁶ RE4.

⁵⁷ RE4 at 13-14.

⁵⁸ Tr. at 236.

⁵⁹ Tr. at 274-278.

⁶⁰ RE4 at 8.

⁶¹ RE4 at 9-12.

⁶² RE4 at 8.

⁶³ PE20.

⁶⁴ Tr. at 492-493.

⁶⁵ Tr. at 626-627.

35. The IEP included numerous accommodations, and consultation to teachers from special education staff with all of Student's instruction provided in the general education classroom.⁶⁶ Student's accommodations address Student's cognitive processing deficits identified in Student's FIE, and Student's attention to task.⁶⁷

36. The ARDC determined Student did not require ESY services.⁶⁸

37. Student's parents participated in the ARDC meeting and agreed with the IEP and placement for Student.⁶⁹ Further, the District provided the parents prior written notice of the ARDC decisions.⁷⁰

38. Petitioner filed the request for this due process hearing on December 28, 2016, and requested evaluations in all areas of disability and need including a FBA, assistive technology evaluation, cognitive and academic achievement assessment, and ***.⁷¹ The District notified Petitioner in its Ten-Day Response to the complaint that the District was willing to conduct the evaluations requested, as well as areas reported as a concern in Petitioner's complaint.⁷² The District provided notice to conduct the evaluations on January ***, 2017, and the necessary consent form.⁷³ The parent provided written consent for the evaluations on January ***, 2017, and requested a language assessment in *** on the consent form.⁷⁴ The District agreed to conduct the language evaluation as well. Further, the District offered to convene an ARDC meeting at that time to discuss any concerns the parent may have with Student's IEP and placement in response to the request for a due process hearing.⁷⁵ However, the parent never responded to the District's offer to convene an ARDC meeting to discuss their concerns.⁷⁶

⁶⁶ RE4 at 16-19; Tr. at 95-98.

⁶⁷ PE23 at 16; Tr. at 662-664; RE4 at 16; Tr. at 709-711.

⁶⁸ RE4 at 23.

⁶⁹ RE4 at 25-27.

⁷⁰ RE4 at 28.

⁷¹ See Petitioner's Request for a Special Education Due Process Hearing.

⁷² See Respondent Riesel Independent School District's Motion For Partial Dismissal, Notice Of Insufficiency and Ten-Day Response To Complaint.

⁷³ RE5; PE4.

⁷⁴ RE5 at 3.

⁷⁵ PE4 at 1.

⁷⁶ Tr. at 117-118.

39. Prior to filing the request for the due process hearing, Student's parents never contacted the Director of Special Education regarding the concerns/allegations they presented for the first time in their request for a due process hearing.⁷⁷

2017 FIE and IEP

40. The District completed another FIE on March ***, 2017.⁷⁸ This FIE included assessment in expressive, receptive, and pragmatic language; ***, a FBA; assistive technology; cognitive; academic; and *** as requested by the parents.⁷⁹

41. At the time of the FIE, Student had passed all of Student's classes from the fall semester and was passing all of Student's classes during the current six- week grading period.⁸⁰

42. The FIE included information from a variety of sources of information, including Student's grades, information from several of Student's teachers, state assessment results, ***, numerous formal assessments, observations of Student, information from Student's parent, and information from Student's discipline reports.⁸¹

43. Student's teachers reported, among other things, that Student had average skills, was quick to grasp ideas, was motivated, had good social skills, ***, was on time for class, completed assignments, had good attendance, and worked well with others.⁸²

44. Diagnostician *** considered all this data when drawing her conclusions regarding Student's level of functioning.⁸³

45. A review of Student's *** revealed Student was ***.⁸⁴

46. The District determined Student's language skills to be within average range.⁸⁵

⁷⁷ Tr. at 115.

⁷⁸ RE6.

⁷⁹ RE6 at 1.

⁸⁰ RE6 at 2.

⁸¹ RE6.

⁸² Tr. at 745.

⁸³ Tr. at 745.

⁸⁴ Tr. at 746.

⁸⁵ R6 at 4-6.

47. The District administered the *** to Student. ***.⁸⁶ The Diagnostician also interviewed Student. Student talked about Student's ***.⁸⁷ The District obtained information from Student's parent and teacher as part of the ***/***.⁸⁸ Based on her interview and cognitive assessment, achievement assessment, and *** with Student, the Diagnostician concluded that Student's *** was appropriate.⁸⁹

48. The District administered a cognitive assessment to Student which revealed an overall full scale cognitive ability that was in the low average range. Student presented with a pattern of cognitive strengths and weaknesses in comprehension-knowledge and processing speed.⁹⁰ The evaluator recommended various accommodations for ARDC consideration to assist Student with these cognitive deficits.⁹¹ The Diagnostician assessed Student's full cognitive profile to ascertain Student's cognitive strengths and weaknesses when determining whether Student continued to present with a learning disability.⁹²

49. The District administered formal academic achievement assessments to Petitioner.⁹³ The Diagnostician, in collaboration with the District *** Specialist and based on the results of the evaluation data and various sources of information, recommended Student did not present with ***.⁹⁴

50. The District conducted an assistive technology assessment for Student.⁹⁵ Based on results of the evaluation, Student did not present with a need for assistive technology devices.⁹⁶

51. The Diagnostician gathered information regarding Student's emotional/behavioral functioning in school.⁹⁷ Student presented age appropriate emotional and

⁸⁶ RE6 at 7.

⁸⁷ RE6 at 8; Tr. at 746-747.

⁸⁸ RE6 at 8-9.

⁸⁹ Tr. at 748.

⁹⁰ RE6 at 10-16.

⁹¹ RE6 at 16.

⁹² Tr. at 753-755.

⁹³ RE6 at 17.

⁹⁴ RE6 at 22-23; Tr. at 762-765.

⁹⁵ RE6 at 23.

⁹⁶ RE6 at 23; Tr. at 767-768.

⁹⁷ RE6 at 8-9.

behavioral skills based on information from Student's teachers and Student's interactions with the Diagnostician. As a result, the Diagnostician determined further emotional/behavioral assessments were not warranted.⁹⁸ Nonetheless, the District conducted a Functional Behavioral Assessment (FBA) Consultation for Student in response to parental request.⁹⁹ The LSSP gathered information from all of Student's teachers regarding Student's behavior.¹⁰⁰ The teachers did not report serious behavioral issues that suggested any specific behaviors that interfered with Student's learning or the learning of others.¹⁰¹ At the time of the FBA, in March of 2017, Student had *** office referrals.¹⁰² Teachers reported Student has some difficulty with attention to task, but responds well to redirection.¹⁰³ Further, teachers reported many positive behaviors presented by Student such as "great student, very personable, doing well, good natured, always willing to actively participate in class activities, and asks questions when Student doesn't understand something, easily motivated, and can meet set goals."¹⁰⁴

52. The Diagnostician did not rely on any single measure of assessment as the sole criteria for her recommendation that Student presented with a SLD. The Diagnostician used technically sound instruments; selected assessments and administered assessments ***; used the assessments for the purposes for which they were valid and reliable; was trained to administer all the assessments administered; administered the assessments in accordance with the instructions; ensured the assessments were tailored to assess Student's specific areas of educational need and not merely to provide a general intellectual quotient; selected assessments and administered assessments so as to best insure results that accurately reflect Student's

⁹⁸ Tr. at 748-752.

⁹⁹ RE6 at 31.

¹⁰⁰ RE6 at 32.

¹⁰¹ RE6 at 31.

¹⁰² RE6 at 31.

¹⁰³ RE6 at 31.

¹⁰⁴ RE6 at 31.

present aptitude or achievement level; and assessed Student in all suspected areas of disability and need.¹⁰⁵

53. The District convened an ARDC meeting to review the FIE on March ***, 2017.¹⁰⁶ The District continued to recommend Student met eligibility as a student with a SLD.¹⁰⁷ More specifically, the ARDC determined that Student continued to be eligible for special education as a student with specific learning disabilities in the areas of ***, ***, and *** ***.¹⁰⁸

54. The Diagnostician reviewed the FIE and the recommendations for instructional accommodations.¹⁰⁹ The ARDC, including Student's parents, reviewed Student's accommodations, and did not recommend changes to the accommodations.¹¹⁰

55. Based on the FIE, the District did not identify Student as a student with *** or recommend *** services for Student.¹¹¹ Student scored within the average range on ***. Therefore, the District determined that Student did not need *** instruction.¹¹² Further, Student's scores on *** were average.¹¹³

56. Based on the FIE, the District did not identify Student as a student with a speech impairment or recommend speech therapy services.¹¹⁴ Student's special education teacher testified that none of Student's teachers expressed concerns to her regarding Student's language abilities, which is consistent with her observations of Student's language skills.¹¹⁵

57. The ARDC also reviewed the *** as well as the FBA, and concluded a Behavioral Intervention Plan ("BIP") was not warranted.¹¹⁶

¹⁰⁵ Tr. at 768-770.

¹⁰⁶ RE7.

¹⁰⁷ RE7.

¹⁰⁸ RE7 at 8.

¹⁰⁹ RE7 at 8.

¹¹⁰ RE7 at 8.

¹¹¹ RE7 at 8.

¹¹² RE6 at 21-23; Tr. at 173-174.

¹¹³ RE6 at 17-18; Tr. at 175.

¹¹⁴ RE7 at 8.

¹¹⁵ Tr. at 274.

¹¹⁶ RE7 at 8.

58. The ARDC determined Student did not require assistive technology based on the assistive technology evaluation.¹¹⁷

59. The District proposed revised *** goals for Student based on the new achievement testing.¹¹⁸

60. The principal asked the parent about her concerns in the request for a due process hearing, specifically if there were specific revisions they were requesting to the IEP or placement. However, the parent refused to tell the ARDC the specific disagreements with the IEP and placement and instead responded it would be dealt with in the due process hearing.¹¹⁹ Both parents attended the ARDC meeting, and did not indicate agreement with the recommendations.¹²⁰ The District offered a 10-day reconvene meeting.¹²¹

61. The District convened the ten-day reconvene meeting on April **, 2017, and the Student's parents attended the meeting.¹²² The District provided the parents the opportunity to present any new information to the ARDC for consideration. The parents did not present any new information to the ARDC.¹²³ Respondent offered the parents an opportunity to express any concerns she had regarding the FBA, assistive technology needs, and **, but the parents declined to do so.¹²⁴ The parents disagreed with the IEP, but declined to provide a statement of exactly what the disagreement was with the IEP.¹²⁵ Instead, the parents stated they would not agree or disagree with anything until the due process hearing.¹²⁶

62. Parent did not provide an April **, 2017 privately obtained psychoeducational evaluation of Student to the District to consider in an ARDC meeting.¹²⁷

¹¹⁷ RE7 at 8.

¹¹⁸ RE7 at 3-4.

¹¹⁹ Tr. at 115-117.

¹²⁰ RE7 at 7-8; 10.

¹²¹ RE7 at 8.

¹²² RE7 at 18.

¹²³ RE7 at 18.

¹²⁴ RE7 at 18-19.

¹²⁵ RE7 at 19.

¹²⁶ RE7 at 19.

¹²⁷ PE16; Tr. at 356.

63. Based on a single standardized assessment alone, the ***, Dr. *** concluded Student presented with a language deficit. Dr. *** ignored numerous sources of data showing that Student did not present with a language deficit, and her own conclusion that Student's scores may have be depressed due to Student's attention during her testing.¹²⁸

64. Contrary to Dr. ***'s conclusion that the District should not have administered a cognitive assessment to Student with verbal questions and responses, Student's verbal comprehension index score obtained by Dr. *** was within the average range, and required verbal directions and verbal responses.¹²⁹

65. The principal testified that he had no concerns with Student's language.¹³⁰ Additionally, the Diagnostician determined that a verbal cognitive assessment was appropriate to assess Student's cognitive strengths and weaknesses.¹³¹

66. Dr. *** concluded Student's academic skills were at *** *** grade level, yet the Kaufman Test of Educational Achievement (KTEA) she administered is not based on the state curriculum or any curriculum at all for that matter. Dr. *** was unable to explain how grade equivalency scores are obtained.¹³² Dr. *** acknowledged that the KTEA doesn't provide information regarding what grade level in the state curriculum Student is functioning on.¹³³

67. Mr. *** completed a ***.¹³⁴ However, Mr. *** did not evaluate or meet Student until after writing his report.¹³⁵ Mr. *** did not speak to any of Student's teachers, interview Student's principal, or observe Student in the school and *** settings.¹³⁶

¹²⁸ PE16 at 12-13; Tr. at 316-318.

¹²⁹ Tr. at 664-665, 771.

¹³⁰ Tr. at 729-730.

¹³¹ Tr. at 755-757.

¹³² Tr. at 386-387.

¹³³ Tr. at 389-390.

¹³⁴ PE20.

¹³⁵ Tr. at 455-456.

¹³⁶ Tr. at 486-487.

68. Student did not present with any behavioral problems when Mr. *** interviewed Student after writing his report.¹³⁷

69. Mr. *** agreed that a *** may include informal data such as questionnaires, curriculum based assessments, school performance measures, ***, and cognitive and achievement assessments.¹³⁸ Mr. *** acknowledged that the IDEA does not require success of ***.¹³⁹

70. Dr. *** provided testimony regarding Student.¹⁴⁰ Dr. *** is a psychologist and LSSP.¹⁴¹

71. Dr. *** did not meet or observe Student in person, nor did she evaluate Student.¹⁴² Instead, she obtained information from Student's mother and reviewed records provided to her by Petitioner.¹⁴³ She did not seek information from Student's teachers or principal, regarding Student's academic or functional performance in school.¹⁴⁴

72. Petitioner offered a two-page document reflecting a medical diagnosis of ADHD at the due process hearing. The document is dated April ***, 2009.¹⁴⁵ However, Student's parent did not provide this document to the District prior to the due process hearing, even though the Diagnostician had asked the parent for any documentation of an ADHD diagnosis when he conducted Student's initial FIE.¹⁴⁶

73. During Student's *** grade year, at the time of the due process hearing, Student had passed all of Student's classes that school year with As and Bs.¹⁴⁷ Student's grades were on enrolled grade level curriculum and were not modified.¹⁴⁸

¹³⁷ Tr. at 487.

¹³⁸ Tr. at 487-488.

¹³⁹ Tr. at 488-489.

¹⁴⁰ Tr. at 601.

¹⁴¹ PE59.

¹⁴² Tr. at 609-610.

¹⁴³ Tr. at 610.

¹⁴⁴ Tr. at 610.

¹⁴⁵ PE34.

¹⁴⁶ Tr. at 135-136, 518-519.

¹⁴⁷ RE9 at 2-3.

¹⁴⁸ Tr. at 105, 229, 265-266, 832.

74. The general education policy in the District allows students to ***. ***. Student successfully *** in previous school years.¹⁴⁹

75. The District utilizes researched based instructional strategies in the general education classroom.¹⁵⁰

76. Student is progressing on enrolled grade level curriculum and ***.¹⁵¹ As a result, the District concluded that it would be inappropriate to pull Student out of the general education classroom for instruction on a modified curriculum.¹⁵²

77. Student's initial ARDC meeting was on May ***, 2016.¹⁵³ Therefore, Student's IEP goals and objectives were not in place for a full school year at the time of the due process hearing during May of 2017. Nonetheless, Student made good progress on Student's goals and objectives.¹⁵⁴ The *** goal included a mastery level of 70%, and Student had obtained a 60% mastery level by April of 2017 on one objective, and mastered the second objective with 80% mastery.¹⁵⁵ Student's *** goal included a 70% mastery of criteria.¹⁵⁶ Student mastered the *** objective with 70% mastery, and was close to mastery of the *** objective with 60% mastery.¹⁵⁷

78. The special education teacher gathered information from Student's teachers to update Student's IEP progress reports.¹⁵⁸ She spoke to all of Student's teachers on a weekly basis regarding Student's academic and nonacademic performance in school.¹⁵⁹ She testified Student is making progress commensurate with Student's peers ***.¹⁶⁰ None of Student's teachers recommended to her that Student should receive instruction in the special education resource classroom instead of the

¹⁴⁹ Tr. at 286, 305.

¹⁵⁰ Tr. at 733.

¹⁵¹ Tr. at 765, 776-778, 832-835.

¹⁵² Tr. at 765-767, 836.

¹⁵³ RE4.

¹⁵⁴ RE11.

¹⁵⁵ RE11 at 1-2.

¹⁵⁶ RE11 at 3-4.

¹⁵⁷ RE11 at 3-4.

¹⁵⁸ Tr. at 212.

¹⁵⁹ Tr. at 224, 227-228.

¹⁶⁰ Tr. at 262.

general education classroom.¹⁶¹ The special education teacher mailed the progress reports to the parent at each progress reporting period.¹⁶²

79. The *** teacher testified ***.¹⁶³ He has taught Student in his classroom for ***.¹⁶⁴ Over that time, he never observed a change in Student's behavior, cognitive ability, or language functioning.¹⁶⁵

80. Although the District offered individual tutoring to Student, Student typically did not attend.¹⁶⁶ The principal testified that tutoring is available every day, both morning and afternoon, but Student does not attend.¹⁶⁷

81. ***.¹⁶⁸ Student's *** scores showed that Student was ***.¹⁶⁹

82. ***.¹⁷⁰ Student did not do as well on the *** as Student did on the ***. However, Student had not received instruction yet in all the areas assessed on the test.¹⁷¹

83. During the 2015-2016 school year, Student had *** discipline referrals ***; *** referrals ***; a referral for ***; *** referrals for ***; a referral ***; a referral for ***; *** referrals for ***; a referral for ***; a referral for ***; and a referral for ***.¹⁷² During the 2016-2017 school year, Student's *** grade year, Student had *** referrals. ***¹⁷³

84. Student's behavior, emotional functioning, and social skills are commensurate with Student's peers.¹⁷⁴ Student's ability to attend and concentrate in class is within normal limits compared to Student's peers.¹⁷⁵ Student is easily redirected when off task.¹⁷⁶

¹⁶¹ Tr. at 279.

¹⁶² Tr. at 248.

¹⁶³ Tr. at 615.

¹⁶⁴ Tr. at 631.

¹⁶⁵ Tr. at 630.

¹⁶⁶ RE6 at 1.

¹⁶⁷ Tr. at 730-731.

¹⁶⁸ Tr. at 495-496.

¹⁶⁹ RE12.

¹⁷⁰ Tr. at 491-492.

¹⁷¹ Tr. at 491-492, 727-728.

¹⁷² RE10.

¹⁷³ RE10 at 14.

¹⁷⁴ Tr. 269-279, 836-837.

¹⁷⁵ Tr. at 270.

¹⁷⁶ Tr. at 270.

85. Student did not take psychotropic medication nor was Student under the care of a mental health professional.¹⁷⁷

86. The principal reported Student to be respectful and had no concerns with Student's ability ***, especially since Student is already *** and Student's parents have trusted Student to ***.¹⁷⁸ The principal testified that Student does not present as a student with significant emotional/behavioral problems at school.¹⁷⁹ Student participates in *** in school.¹⁸⁰

87. ***.¹⁸¹ Student currently has the necessary skills to ***.¹⁸²

88. The principal testified that *** is an appropriate *** goal for student because Student ***.¹⁸³ Further, he pointed out that ***." Even if Student were not *** it would not preclude Student from ***.¹⁸⁴

89. Student is ***.¹⁸⁵

ARGUMENT AND AUTHORITIES

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied FAPE. *Schaffer v. Weast*, 126 U.S. 528 (2005). The IDEA creates a presumption in favor of the education plan proposed by the District. *Schaffer v. Weast*. Consequently, Petitioner bears the burden of proof in this matter to prove the District failed to provide, and continues to fail to provide, Student a FAPE. This includes the burden of proof

¹⁷⁷ RE3 at 9.

¹⁷⁸ Tr. at 720-723.

¹⁷⁹ Tr. at 722.

¹⁸⁰ Tr. at 724.

¹⁸¹ Tr. at 271.

¹⁸² Tr. at 271.

¹⁸³ Tr. at 724-725.

¹⁸⁴ Tr. at 725-727.

¹⁸⁵ Tr. at 831.

regarding harm or deprivation of educational benefit. The law does not require the student's educational potential be optimal or maximized.

When a parent challenges the appropriateness of an IEP, two questions must be considered: First, whether the District complied with the procedural requirements of the IDEA, and second, whether the IEP developed through such procedures was "reasonably calculated to enable the child to receive educational benefits." *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).

In *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017), the Supreme Court reviewed *Rowley* and concluded that many courts had misinterpreted the Supreme Court's opinion by concluding that any benefit, no matter how small, was sufficient to constitute a FAPE. The Supreme Court concluded that the IDEA requires an educational program reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.

The Fifth Circuit has defined a FAPE by describing four factors to consider in evaluating whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated. *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). The educational benefits described must be more than *de minimis* as outlined in *Endrew F.*

Issue #1: Whether Respondent failed to properly evaluate Student during the 2015-2016 and 2016-2017 school years, resulting in a denial of a FAPE for Student. Specifically, whether Respondent failed to properly evaluate Student for *, assistive technology, in all areas of disability or need, or incorrectly evaluated Student in the areas of cognitive/academic, behavior, assistive technology, and ***.**

Prior to the initial evaluation by the District, Student was functioning in a regular education classroom. Student was passing at grade level and Student's emotional/behavioral performance was within the norms for other students of Student's grade level. Student's performance on state mandated testing was on grade level. In 2009, the parent had an evaluation completed on Student that showed learning deficits. This evaluation was conducted privately and when Student was not enrolled in the District. When Student was enrolled in the District, the parent did not immediately provide a copy of the evaluation to the District and waited to do so in 2016. The District cannot be held responsible for knowing the contents of that evaluation and acting upon it until it received the evaluation. In addition, the lapse of time between the evaluation and its disclosure to the District casts doubt on the validity of the findings as applied to Student in 2016. The evidence supports the conclusion that the District timely conducted an appropriate FIE for Student, and that the evaluations were sufficient.

A question has been raised as to whether the District properly evaluated Student for ***. The District used the services of *** who was the District's Director of Curriculum and Accountability/***. Ms. *** is not certified in special education, ***. Her education in *** was a TEA sponsored five-day training in ***.¹⁸⁶ Consequently, Petitioner was concerned about conclusions she drew regarding the presence of, or lack of, *** in Student. The 2017 FIE concluded that Student was not in need of services for ***. However, Petitioner failed to provide sufficient evidence that would show that the FIE did not meet the requirements of the IDEA.

The District properly evaluated Student's need for assistive technology. The 2017 FIE addressed the issue and found no need for assistive technology. The Petitioner failed to meet the burden of proof on this issue.

Although by sheer numbers the referrals that Student experienced during the 2015-2016 school year would be an indicator of the possible need for a behavioral management plan, numbers do not necessarily dictate a result. Examination of the nature of the actual referrals does not reveal any substantive behavioral problems. It is significant that during the 2016-2017 school year the number of referrals decreased

¹⁸⁶ Tr. at 151-154.

dramatically. The testimony of Student's *** teacher makes it clear that he does not believe that the Student has a need for a behavior plan. He testified that he ***. ***. Of all the witnesses, he had the most contact with and the most opportunities to observe Student. He described Student as "gets along well with others," "does well in class", ***, " and "no problems in the social setting."¹⁸⁷ The District properly evaluated Student's emotional/behavior needs.

The IDEA implementing regulations provide that in conducting an evaluation, the District must: "(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum; (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate education program for the child; and (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors."¹⁸⁸

Additionally, the IDEA implementing regulations require a District to ensure that: "(1) Assessments and other evaluation materials used ... [a]re selected and administered so as not be discriminatory on a racial or cultural basis; [a]re provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, ... [a]re used for the purposes for which the assessments ...are valid and reliable, [a]re administered by trained and knowledgeable personnel; and [a]re administered in accordance with any instructions provided by the producer of the assessments. (2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

¹⁸⁷ Tr. at 624.

¹⁸⁸ 34 C.F.R. §300.304(b) (1-3).

(3) Assessments are selected and administered so as to best ensure that ...the assessment results accurately reflect the child's aptitude or achievement level ... (4) The child is assessed in all areas related to the suspected disability ... (6) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs. (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided."¹⁸⁹ The evidence showed the District met all these requirements and conducted an appropriate evaluation for Petitioner. As a result, Petitioner is not entitled to an IEE at District expense.

The question then arises as how the Hearing Officer is to decide among opposing results of evaluations by similarly qualified experts. The evidence supports giving deference to the District's experts.¹⁹⁰

Issue #2: Whether Respondent failed to provide Student with a FAPE within the meaning of the IDEA during the 2015-2016 & 2016-2017 school years. Specifically, whether Respondent failed to provide Student * services, failed to properly write present levels of performance and meaningful measurable goals; failed to track Student's progress on Student's goals; failed to provide Petitioner's parent with progress reports on goals; failed to consider positive behavioral supports; failed to provide assistive technology devices; and failed to provide student with *** in accordance with the IDEA requirements; failed to provide extended school year (ESY) services; failed to provide Student with instruction based on peer-reviewed research.**

In *Endrew F. v. Douglas County Sch. Dist.*, 69 IDELR 174 (U.S. 2017), the United State Supreme Court noted that any review of the IEP must appreciate that the question is whether this IEP is reasonable, not whether the court regards it as ideal. The Court in *Endrew F.* also noted the deference which should be given to District staff in determining the appropriateness of the IEP.

¹⁸⁹ 34 C.F.R. §300.304(c) (1-4, 6, 7).

¹⁹⁰ M.B. Ex Rel. Berns v. Hamilton Schools, 668 F.3d 851, 962 (7th Cir. 2011) ("it is inappropriate to defer to the opinion of a single psychologist, particularly where that opinion is in conflict with the opinions of teachers and other professionals.").

The Court in *Rowley* (see citation p. 23 *infra*) recognized that the IDEA requires that children with disabilities receive education in the regular classroom whenever possible. When this preference is met, the system itself monitors the educational progress of the child. Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material. Progress through this system is what our society generally means by an education. And access to an education is what the IDEA promises. Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be “reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” Student has been in the regular classroom throughout Student’s enrollment in the District. This is the least restrictive environment, and based upon the evaluations by District personnel best fits Student’s needs.

The evidence showed the District provided Student a FAPE in the general education classroom as contemplated by the IDEA and Student demonstrated progress with passing grades, passing scores on the necessary state assessments, and a scores reflecting ***. Student’s IEP for the 2015-2016 and 2016-2017 school years provided Student with a FAPE.

The question then becomes whether the District gave cogent and responsive explanations for their decisions with respect to Student. It is the opinion of the Hearing Officer that those District employees and representatives who testified articulated good reasons for their decisions. In addition, they exhibited flexibility in addressing requests by the parents, and granting new requests after the due process complaint was filed. Student demonstrated meaningful progress through multiple sources in Student’s education.

*** 191

Regarding the *** in this case, the undersigned finds that Student’s *** was based on Student’s ***. Student’s *** testified that Student’s *** is appropriate for

191 ***

Student in light of Student's *** skills presented in the classroom with peers, and communication skills.¹⁹² The principal testified that he had no concerns with Student's *** and pointed out that Student ***, and functions very well at school.¹⁹³ The *** were in compliance with the IDEA.

Each public agency must ensure that extended school year (ESY) services are available as necessary to provide FAPE.¹⁹⁴ The evidence does not support that Student needed ESY services during the relevant time period. Student did not regress during the summer and made progress with the educational program provided. Petitioner failed to meet their burden of proof on the ESY.

After a review of the evidence submitted, this Hearing Officer has concluded that Student's IEP for the 2015-2016 and 2016-2017 school years provided Student with a FAPE. Additionally, the District timely provided the parent with Student's progress reports.

Issue #3: Whether during the 2015-2016 and 2016-2017 school years Respondent failed to provide Student's parent Prior Written Notice (PWN) pursuant to the IDEA, and was this a denial of a FAPE to Student.

The IDEA regulations require prior written notice (PWN) to the parent where the District proposes or refuses to initiate or change the identification, evaluation, placement or provision of FAPE.¹⁹⁵ The PWN must describe the action proposed or refused by the District. It must include an explanation of why the District proposed or refused the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action or refusal. It must advise the parent of the child with a disability of their protections under procedural safeguards.¹⁹⁶

¹⁹² Tr. at 837-839.

¹⁹³ Tr. at 729.

¹⁹⁴ 34 CFR §300.106.

¹⁹⁵ 34 C.F.R. §300.503(a).

¹⁹⁶ 34 C.F.R. §300.503(b).

The District provided PWN in compliance with the regulations in response to the parental request for evaluation in 2016 and 2017.¹⁹⁷ The District also provided PWN after both ARDC meetings, which the parent attended.¹⁹⁸ The District provided parent PWN pursuant to the IDEA.

Issue #4: Whether Respondent failed to educate Student in the least restrictive environment (LRE) during the 2015-2016 school year, and was this a denial of a FAPE.

Throughout the relevant time period, Student was educated in the general education classroom. This is the least restrictive environment available. The IDEA requires the District implement the IEP in the general education classroom if Student can make progress on Student's IEP goals and objectives in general education.¹⁹⁹ An examination of the entire record demonstrates that Student is making progress on the enrolled grade level curriculum as demonstrated by Student's passing grades, state assessment test scores, and *** scores. The records indicate that Student is ***.

The IDEA implementing regulations define specially designed instruction as "adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child...and to ensure access of the child to the general curriculum, so that the child can meet the educational standards...that apply to all children."²⁰⁰

The District through its special education specialist, Ms. ***, monitors Student's progress on a weekly basis. She testified that she meets with each of Student's teachers every week to discuss Student's progress and any needs that must be addressed.²⁰¹ In addition, the teachers are providing the modifications and services required by the IEP. During the 2015-2016 and 2016-2017 school years, the District educated Student in the least restrictive environment.

¹⁹⁷ RE1 at 1-4; RE5 at 1-3.

¹⁹⁸ RE4 at 27-28; RE7 at 20-21.

¹⁹⁹ Daniel R.R. v. State Board Of Education, 874 F.2d 1036 (5th Cir. 1989).

²⁰⁰ 34 C.F.R. §300.39(b)(3).

²⁰¹ Tr. at 224-225.

CONCLUSION

1. Petitioner currently resides within the geographical boundaries of the Riesel 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 responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding, and Respondent is required to provide each disabled child with a 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 hearing complaint and have a hearing on any matter relating 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. Riesel 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. *R.H. v. Plano Indep. School Dist.*, 607 F.3d 1003 (5th Cir. 2010); *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883(1984). The burden of proof is by a preponderance of the evidence.
5. The Texas one-year statute of limitations (SOL) began running one year before the date the complaint was originally filed-December 28, 2016. 19 Texas Administrative Code §89.1151(c).
6. During the 2015-2016 and 2016-2017 school years, the District correctly determined that Student is a child with one or more of the IDEA enumerated

- disabilities who, by reason therefor, is eligible for special education and related services, which Student received as a child with a SLD. 34 C.F.R §300.8(a)(1).
7. Respondent's proposed placement and schedule of services for the 2015-2016 school year placed Student in the LRE. 20 U.S.C §1412(a)(5)(A).
 8. Respondent provided Student a FAPE during the 2015-2016 and 2016-2017 school years.
 9. Respondent properly evaluated Student in all areas of suspected disability during the 2015-2016 and 2016-2017 school years. 34 C.F.R §300.304.
 10. Respondent provided Petitioner with PWN pursuant to IDEA.

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, all of Petitioner's requested relief is **DENIED**.

SIGNED and ENTERED on July 6, 2017.

Sherry R. Wetsch
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

The 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. 34 C.F.R § 300.516.