

DOCKET NO. 120-SE-1218

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

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Student, by next friends Parent and Parent (Student or, collectively, Petitioner), brought this action against the Brownsville Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations.

Petitioner requested a due process hearing on December 21, 2018, with notice issued by the Texas Education Agency the same day. Petitioner filed a First Amended Petition and Request for Special Education Due Process Hearing on February 4, 2019. Respondent filed a Response to the Amended Petition on February 12, 2019.

The main issue in this case is whether the District denied Student a free, appropriate public education (FAPE) by failing to develop an appropriate Individualized Education Program (IEP) reasonably calculated to enable Student to make progress in light of Student's unique circumstances.

The hearing officer concludes Student was provided a FAPE by the District. Petitioner's requested relief is therefore denied.

II. DUE PROCESS HEARING

The due process hearing was held on October 29-31, 2019 and was recorded and transcribed by a certified court reporter.

Petitioner was represented by Petitioner's legal counsel, Holly Terrell and Daniel Garza of Cirkiel and Associates. Fernando de Urioste, an advocate at the same firm, assisted as part of the legal team. Student's parents attended the hearing.

Respondent was represented by its general counsel, Baltazar Salazar. ***, School Board Chair, participated as the party representative. ***, Mr. Salazar's paralegal, also attended.

III. ISSUES

A. Petitioner's Issues

The legal issues for decision are as follows:

FAPE: Whether the District denied Student educational services commensurate with Student's unique and individualized needs.

PLACEMENT: Whether the District failed to educate Student in the least restrictive environment.

FAPE: Whether the District failed to provide Student necessary related and supplementary services, including speech therapy, occupational therapy (OT), physical therapy (PT), counseling, psychological services, social skills training, and ***.

FAPE: Whether the District failed to develop and implement appropriate Individualized Education Programs (IEPs) for Student.

FAPE: Whether the District failed to provide educational services in a collaborative manner, and failed to consider information from Student's parents and ensure their meaningful participation in the development of Student's IEP.

FAPE: Whether the District failed to communicate with Student's parents regarding Student's educational needs.

PROCEDURAL: Whether the District failed to provide Student's parents progress reports.

EVALUATION: Whether the District failed to timely evaluate student in all areas of suspected disability.

FAPE: Whether the District misrepresented information to Student's parents concerning Student's educational needs.

FAPE: Whether the District failed to develop and implement an appropriate *** for Student.

FAPE: Whether the District failed to provide Student Extended School Year (ESY) services.

B. Petitioner's Requested Relief

1. An Individualized Educational Evaluation (IEE) in all areas of disability and need;
2. An order directing the District to convene an Admission, Review, and Dismissal (ARD) Committee meeting to address the findings of the IEE;
3. An evaluation for leisure activities and the opportunity for Student to participate in both academic and non-academic programs;
4. An appropriate ***;
5. An order directing the District to retain an expert consultant to address Student's educational and non-educational needs;
6. An order directing the District to invite the expert consultant to all of Student's ARD Committee meetings for the next two years;
7. Training by the expert consultant for all District staff who interact with or may interact with Student for the next two years;
8. Supervision by the expert consultant of District personnel responsible for implementing Student's IEP and Student's ARD Committee;
9. Ongoing and compensatory speech therapy services;
10. Ongoing and compensatory OT services;
11. Ongoing and compensatory PT services;
12. Ongoing and compensatory counseling services;
13. Ongoing and compensatory psychological services;

14. Ongoing and compensatory social skills training services;
15. Ongoing and compensatory *** services;
16. An order directing the District to provide Student speech therapy, OT, PT, counseling, psychological services, social skills training, and *** services outside of the school environment by a private entity not employed by or contracted with the District;
17. Social work services;
18. Home and Family Support Services;
19. A stipend of up to \$1,000 for parent training;
20. Private school placement at District expense for the summer of 2019, the 2019-2020 school year, the 2020-2021 school year, and the 2021-2022 school year, including the summers in between each of these school years;
21. An order directing the District to train all staff on specific policies and procedures regarding discrimination against students with disabilities; and
22. Any other relief the hearing officer may see fit to prescribe.

C. The School District's Legal Position

The District generally denies the allegations and maintains it provided Student a FAPE at all relevant times, and asserted the below affirmative defense:

STATUTE OF LIMITATIONS: Whether any of Petitioner's claims that accrued outside of the one year statute of limitations rule as applied in Texas should be dismissed.

IV. FINDINGS OF FACT

A. Background

1. Student is a *** student who has attended school in the District Student's entire school career. Student currently attends ***. Student lives with Student's parents in Brownsville, Texas and enjoys ***.¹

¹ Petitioner's Exhibit 9 at 1 (P. Ex. ___ at ___); Transcript (Tr.) at 430.

2. Student's diagnoses include *** and ***. Student's physical condition has deteriorated since 2016 ***. ***.²
3. The District conducted a full and individual evaluation (FIE) in January 2010, a Review of Existing Evaluations and Data (REED) in January 2013, and an FIE in November 2016 that assessed Student's related service needs. Student is eligible for special education as a student with ***, ***, and speech impairment. Student communicates in ***. Student requires constant supervision at school and assistance with most activities of daily living, including ***.³
4. Student tries Student's best and generally wants to work in class. Student has excellent attendance. Student is easily distracted and needs redirection to stay on task. Student's reading level is very low. Student can ***, needs information read to Student, and requires functional reading assistance in all classes. Student performs best working in small groups and listening and responding verbally. Student can ***. Student sometimes refuses to work, but usually participates in class with encouragement and cueing.⁴
5. Student's *** other claims are the subjects of pending federal court litigation. The parties entered into an agreement under T.R.C.P. Rule 11 releasing any IDEA claims accruing before November 21, 2017. Student's *** teacher received an email from a previous teacher ***.⁵

B. April 2018 ARD Committee Meeting

6. Student's parent or parents attended all ARD Committee meetings, sometimes articulating concerns and goals for their ***. Student's parents have not raised specific concerns about Student's educational program outside of ARD Committee meetings. Student's ARD Committee convened on April ***, 2018 to discuss ***.⁶
7. The ARD Committee found Student continuing eligibility as a student with ***, speech impairment, and ***. Minutes reflect a parental report of improved communication over the last year. Student's *** teacher reported Student is great to have in class and had no behavioral problems.⁷
8. Student's case manager, who is also Student's special education teacher for *** and ***, drafted Student's IEP goals and objectives in academic areas, including ***, through a

² P. Ex. 1 at 3; Tr. at 431-432, 433-435.

³ P. Ex. 1 at 3, 9, 10; P. Ex. 2 at 9-17; P. Ex. 6 at 2, 3; P. Ex. 10; Tr. at 291, 427, 436, 443, 454, 456-457.

⁴ P. Ex. 6 at 1, 2; P. Ex. 9 at 2; Tr. at 417-418, 422-423, 426-427.

⁵ Respondent's Amended Response at 1; Attachment to Amended Response (February 12, 2019); Tr. at 412-414.

⁶ P. Ex. 7; Tr. at 347-348.

⁷ P. Ex. 7 at 32, 34; P. Ex. 9 at 2; Tr. at 439-440, 447-451, 461, 471.

collaborative process of gathering feedback from instructors and reviewing grades and progress reports to determine the proper content of a particular goal. An IEP goal should consist of four elements: timeframe, behavior, condition, and measurability. An IEP may include functional goals not tied to a particular curriculum or assessment, or other long-term goals that repeat over time, with mastery measured differently as the student advances ***.⁸

9. The amount of direct or indirect related services a student requires depends on his or her needs and the provider's service guidelines. When an ARD Committee determines a student requires a particular related service, it should develop a goal in that area. Related service personnel provided present levels of academic achievement and functional performance (PLAAFPs) to Student's case manager, who developed PLAAFPs statements in academic areas, ***.⁹
10. PLAAFPs are individualized performance assessments that drive formulation of a student's IEP goals and objectives and the services he or she receives. PLAAFPs should assess strengths and weaknesses and what a student can and cannot do. If a student receives related services, PLAAFPs should address how related service needs impact academic expectations. Progress on a particular goal or objective may inform a student's PLAAFPs, and PLAAFPs development requires participation of appropriate personnel familiar with the student's strengths and needs.¹⁰
11. The District provides progress reports to parents every six weeks. Progress reports inform parents on a student's progress on his or her IEP goals and objectives in a report sent home in a homework folder for parental signature. The District uses a software program to prepare them. Progress reports provided to Student's parents did not convey the percentage of mastery of a particular goal or objective. Accurate progress reporting is required to prepare accurate PLAAFPs statements that reflect a student's needs. Student's case manager prepared Student's progress reports in all areas, ***. The April 2018 IEP called for progress reports to Student's parents every six weeks.¹¹
12. The IEP called for 70% or higher percentage of mastery on goals and objectives, as directed by state standards. Mastery of an IEP goal may be measured through observations and role-playing activities, accurately answering questions to information presented, such as a video or story/text read aloud, or performing a task independently. Student may be presented with a different choices verbally or using picture cards, icons, or concrete objects, and select an answer in a trial of three or four choices. The number of choices or trials is not be reflected in the goal. Student's *** disabilities make it difficult to sustain

⁸ Tr. at 385-386, 552-554.

⁹ Tr. at 62-63, 84-86.

¹⁰ Tr. at 94-95, 288, 379-385.

¹¹ P. Ex. 7 at 7-21; Tr. at 82-83, 143-144, 326, 385-388, 392-393, 404, 426, 527-529.

pencil and paper tasks, so assessing progress includes class participation.¹²

13. ESY services may be recommended for a student who will regress if not provided summer instruction, as determined by teacher observations and/or lack of progress on goals and objectives and recorded on a District form. Progress reports are indicators of whether a student may regress over the summer and need ESY services. The District gathers documentation for students showing regression to assist in determining eligibility. The April 2018 ARD Committee did not recommend ESY services for summer 2018 because regression was not noted in any area.¹³
14. A *** classroom with a certified special education teacher and paraprofessional support is a placement available to students with more severe disabilities, ***. These students participate in *** general education classes and activities to offer exposure to different educational activities.¹⁴
15. The District uses *** curriculum in its *** classrooms, which can be adjusted to a particular student's levels, including those with multiple disabilities, ***, who receive instruction linked to grade-level curriculum through prerequisite skills. The District also uses ***, a curriculum that *** introduces students to Texas Essential Knowledge and Skills (TEKS) aligned curriculum.¹⁵
16. For students with IEPs, certain goals and objectives align with the TEKS for every grade level and subject. An IEP goal should identify the skill to be taught and the timeframe to master it, and include a way to measure progress towards mastery. Skill mastery is based on the mandatory curriculum components. Goals should identify a long-term skill to be achieved over an entire year, with objectives reflecting the mastery level to achieve it, usually stated in a percentage or fraction of trials.¹⁶
17. The April 2018 IEP called for content modifications to the general education curriculum *** Reading, ***, Math, Science, *** (***), ***, ***, ***, and ***. Modifications to access the general education curriculum were needed in ***, transportation, speech therapy, and AT. The ARD Committee reviewed PLAAFPs in the areas of AT, behavior, communication, Reading, Writing, Math, Science, Social Studies, ***, self-help, attendance, transportation, statewide assessments, *** services, speech therapy, OT, PT, and ***.¹⁷
18. The April 2018 IEP called for ***. The IEP also called for three pieces of assistive

¹² P. Ex. 7 at 7-21; Tr. at 112-113, 340-341, 399-400, 407.

¹³ P. Ex. 7 at 30, 32; P. Ex. 38; Tr. at 404-405, 415, 421.

¹⁴ Tr. at 73-77.

¹⁵ P. Ex. 6 at 1, 2, 25-27; P. Ex. 7 at 28; Tr. at 531-533, 534-535.

¹⁶ Tr. at 86-89, 98, 137-138, 153, 161, 261, 532.

¹⁷ P. Ex. 7 at 1, 3-4, 32.

- technology: a computer, ***, and *** that allows District personnel to hear *** Student.¹⁸
19. The District does not have a student pain management policy. Pain management needs at school are determined by the parent(s), school nurse, and appropriate outside medical providers. A medical provider has not prescribed a pain regimen for Student at school. Student is allowed to lie down at school when in pain, and may rest for 30 or more minutes when it is severe.¹⁹
20. A speech therapist attended the April 2018 ARD Committee meeting. Student receives speech therapy to improve expressive language skills. Student had mastered certain targets, including following simple directives, responding to simple what and where questions, answering in simple phrases and sentences, and naming common objects. Two speech goals focused on enhancing speech *** and classroom participation, and the speech therapist recommended continued indirect speech therapy consultative services one time every six weeks for 20 minutes.²⁰
21. An occupational therapist attended the April 2018 ARD, recommending continued OT services. Student was making slow, steady progress. Student could consistently ***. Student received indirect PT services at school to assist with ***. The physical therapist reported continued difficulty with sitting tolerance due to ***. Continued indirect PT services for one 15 minute session every six weeks were recommended.²¹
22. ***. *** activities expose students with disabilities to ***, and certain *** activities may be more appropriate for ***.²²
23. The District uses a software program, known as ***. ***. ***. ***. ***. Student is interested in *** and participates in ***.²³
24. The April 2018 ARD Committee reviewed Student's *** activities, including: student interviews in November 2016 and November 2017, parent interviews in October 2016 and October 2017, teacher interviews in November 2016 and November 2017, and *** evaluations in November 2016 and November 2017. Student was ***. *** goals included ***. To further *** goals, Student would participate in ***. Student would also collaborate with ***. *** goals included ***.²⁴
25. *** goals may be broader and may take more than one year to accomplish. The April 2018

¹⁸ P. Ex. 6 at 5; Tr. at 394.

¹⁹ Tr. at 98-99, 426, 428.

²⁰ P. Ex. 7 at 34.

²¹ P. Ex. 7 at 34-35.

²² P. Ex. 28; Tr. at 99-101, 106, 180-81, 185, 190, 420.

²³ Tr. at 189-190, 197-198, 230-231.

²⁴ P. Ex. 7 at 6.

- IEP included five goals, including school-based opportunities to ***, maintaining ***, demonstrating proper use of ***, enrolling in a *** ***, ***. Student's parents were given information on service providers that might serve Student ***.²⁵
26. The April 2018 IEP included an *** goal of using context to determine the meaning of unfamiliar words, with an objective of using a dictionary to define new words and ***. A reading/word identification goal focused on understanding new vocabulary, with an objective of identifying ***. A writing/penmanship goal focused on legibly writing and ***, with objectives in writing *** and recognizing ***. A reading comprehension goal focused on making inferences and drawing conclusions about text, with objectives of identifying the main idea of a passage ***.²⁶
27. The April 2018 IEP had a goal to develop ***. Another goal focused on performing assigned jobs, ***.²⁷
28. A *** Math goal (***) focused on recognizing linear equations and inequalities, with an objective of ***. An *** Math goal focused on describing data on graphs, with an objective of collecting, sorting, and organizing graph data.²⁸
29. A *** Science (***) goal focused on relationships in the food chain, with an objective of understanding what removal of an element of the ecosystem may have. An *** Science goal focused on the relationship between force, motion, and energy, with an objective on recording the impact of push/pull dynamics on a graph. An *** Social Studies and *** goal focused on rights and responsibilities under the bill of rights, ***. A *** Social Studies and *** (***) goal focused on recognizing various government officials, with an objective of comparing the roles of state versus national political figures.²⁹
30. The April 2018 IEP set out extensive instructional accommodations. In general education ***, Student required shortened instructions, teacher checks for understanding, and simplified directions. Other modifications included encouraging class participation; participation-based grading; exemption from ***; opportunities to leave class for specialized assistance; frequent feedback; private discussions about behavior; and supervision during *** activities. Preferential seating and *** were required in all classes.³⁰
31. Student is ***. *** assessments in the spring of 2018 showed Student's performance varied and Student required *** assistance. The ARD Committee determined Student

²⁵ P. Ex. 7 at 6-10.

²⁶ P. Ex. 7 at 10-13.

²⁷ P. Ex. 7 at 14-15.

²⁸ P. Ex. 7 at 16-17.

²⁹ P. Ex. 7 at 18-19, 20-21.

³⁰ P. Ex. 7 at 22.

would participate in ***. The April 2018 IEP addressed allowable modifications to state assessments, including pairing images with text, demonstrating concepts or relationships in images or text, presenting images one at a time, covering or isolating images, and using picture representations for key words. Other modifications included calculator use, manipulatives, or math tools, rereading passages, and structured reminders.³¹

32. The April 2018 ARD Committee conducted a Review of Existing Evaluations and Data (REED). A REED may be done between three-year evaluations, as needed, to determine if existing evaluations or data remain appropriate or a new evaluation is needed. ***. Additional assessments in areas that may change, such as speech therapy or OT, may be warranted outside of the three-year evaluation schedule.³²
33. In determining a student's least restrictive environment, an ARD Committee considers social benefits of inclusion and how a student can access experiences of general education students through general education curriculum exposure. The April 2018 ARD Committee considered Student's educational placement, finding the modifications Student required to achieve Student's goals and objectives could not be implemented in the general education classroom without eliminating essential components of the curriculum/activity given Student's need for small group instruction and competencies ***. Continued placement *** where Student could work on *** was recommended.³³
34. Student has *** for each academic subject. Student's ***, is an experienced educator who has worked in the District since 2005. ***.³⁴
35. For the 2017-2018 school year, Student participated *** in the general education classroom for 45 minutes a day, with all other subjects in the *** classroom. Student also received speech therapy for 20 minutes every six weeks, OT for 30 minutes every four weeks, and PT for 30 minutes every six weeks. Student attends lunch every day with Student's classmates.³⁵

C. October 2018 ARD Committee Meeting

36. Student's ARD Committee convened on October ***, 2018 for Student's annual meeting, finding continuing eligibility as a student with ***, speech impairment, and ***.³⁶
37. Student required instructional accommodations *** in the general education classroom and content modifications to the general education curriculum ***. Modifications to access

³¹ P. Ex. 7 at 22-26.

³² Tr. at 59-60, 65-66.

³³ P. Ex. 7 at 28, 31; Tr. at 91-92.

³⁴ Tr. at 379-385.

³⁵ P. Ex. 7 at 28, 30-31; Tr. at 424.

³⁶ P. Ex. 9 at 1.

the general education curriculum included ***, ***, speech therapy, and ***. The ARD Committee reviewed PLAAFPs in ***.³⁷

38. The October 2018 ARD Committee reviewed PLAAFPs in related services, including speech, OT, and PT. In speech, Student communicated ***. Student had been declining to ***, and dismissal from speech services at the next annual meeting was recommended.³⁸
39. Student's OT services were aimed at improving functional writing skills. Student could ***. Student needed assistance selecting words ***. Student's mother expressed a goal of being able to ***. Student could ***. Because Student performed and completed tasks as presented with modifications, the ARD Committee recommended a reduction in OT services from direct to indirect (consultative) one time every six weeks.³⁹
40. PT services focused on ***. Teachers were instructed ***. The October 2018 ARD Committee discussed Student's recent *** at home and the possibility Student may start to use it at school, recommending continued indirect PT services one time every six weeks for 15 minutes.⁴⁰
41. The ARD Committee reviewed ***, including student interviews in November 2016 and November 2017; parent interviews in October 2016 and October 2017; teacher interviews in November 2016 and November 2017; *** dated October ***, 2018; student and parent questionnaires in October 2018; *** in November 2016 and November 2017; and a *** assessment checklist.⁴¹
42. Student's *** goal *** was *** focused on gaining maximum social communication, ***. To further *** goals, Student would participate in ***. *** goals included *** interacting with Student's environment more independently ***.⁴²
43. The October 2018 IEP included four *** goals, including ***, completing at least one ***, and identifying appropriate ***. *** activities included: *** and speech therapy, ***, related services including PT and OT, and *** and school events. Student would develop *** by helping ***. ***. Student's parents were given information on how *** might serve Student ***.⁴³
44. *** goal (***) focused on listening attentively, with an objective of identifying the spoken message after class discussions/presentations. An *** goal (***) focused on speaking

³⁷ P. Ex. 9 at 1-2.

³⁸ P. Ex. 9 at 3.

³⁹ P. Ex. 9 at 3.

⁴⁰ P. Ex. 9 at 3.

⁴¹ P. Ex. 9 at 5.

⁴² P. Ex. 9 at 5.

⁴³ P. Ex. 9 at 6-8.

- clearing and effectively for a variety of audiences, with an objective of identifying prewriting strategies to generate ideas, develop voice, and plan. An *** goal (***) focused on identifying the conventions and mechanics of written English, including grammar, with an objective of identifying accurate spelling and correct use of punctuation and capitalization. An *** goal (***) focused on comprehending selections read aloud, with an objective of learning new vocabulary, including numbers, shapes, colors, and directions. An *** goal (***) focused on responding to texts, with an objective of asking and asking relevant questions and contributing in small group discussions.⁴⁴
45. A *** goal (***) focused on learning to access school and community health services, with an objective of how understanding how technology impacts the health of individuals, families, and communities. An *** goal focused on improving *** skills, with an objective of using ***.⁴⁵
46. A Math goal (***) focused on identifying the mathematical process standards and algebraic methods to solve equations, with an objective of identifying math solutions to everyday problems. A Math goal (***) focused on identifying *** figures, with an objective of identifying and selecting tools to solve problems.⁴⁶
47. A Science (***) goal focused on identifying the significance of plants in the environment, with an objective of identifying of identifying plan systems and subsystems. A Science (***) goal focused identifying the sources and flow of energy through an environmental system, with an objective of identifying source, use, quality, and conservation of water. A Social Studies and *** goal (***) focused identifying distribution patterns and characteristics of different cultures, with an objective of identifying changes in technology, transportation, and communication affect patterns of economic activities. A Social Studies and *** goal (***) focused on identifying historical points of relevance, with an objective of identifying major eras in world history.⁴⁷
48. The October 2018 IEP called for progress reports to Student's parents every six weeks.⁴⁸
49. The October 2018 IEP did not include goals in speech, OT, or PT. The IEP also did not include goals to address ***, or use of ***.⁴⁹
50. The IEP called for *** instructional modifications, including specialized *** instruction. ***, Student required emphasis on major points; specialized curriculum; shortened instructions; visual aids; teacher checks for understanding; directions given in different

⁴⁴ P. Ex. 9 at 9-13.

⁴⁵ P. Ex. 9 at 14-15.

⁴⁶ P. Ex. 9 at 16-17.

⁴⁷ P. Ex. 9 at 18-21.

⁴⁸ P. Ex. 9 at 6-21.

⁴⁹ Tr. at 286-287, 288, 297-298, 299-302, 313-314.

ways; directing to specific information; reading support; and scaffold steps. Other modifications included ***; access to equipment; encouraging class participation; exemption from reading before peers; opportunities to respond orally with extra time; special projects in lieu of assignments or alternate assignments; participation-based grading; exemption from ***; opportunities to leave class for specialized assistance; multiple choice tests; preferential seating; private discussions about behavior; and supervision during transitions.⁵⁰

51. Student would take the STAAR***, and the October 2018 IEP listed allowable modifications.⁵¹
52. The October 2018 ARD Committee recommended continued placement in ***. Student's Schedule of Services called for 225 minutes per week per subject in ***. Student would participate in *** for 225 minutes a week in the general education classroom.⁵²

D. March 2019 FIE

53. Student's ARD Committee convened on December 6, 2018. A REED determined more information was needed to determine Student's current educational needs, to include an updated FIE. Student's parents signed consent for an FIE, and the District provided notice of procedural safeguards.⁵³
54. Sources of data for the FIE, completed in March 2019, included parent and teacher interviews and an informal speech-language sample. Other evaluations included the Goldman-Fristoe Test of Articulation-3rd edition (***), standardized assessments to measure speech sound abilities in articulation; the Functional Communication Profile-Revised, a comprehensive informal inventory of major skill categories; and a Developmental Inventory of Skills.⁵⁴
55. A speech therapist evaluated Student, recommending continued speech therapy on a consultative basis focused on conversational skills, continued use of ***, encouraging vocal participation and topic development during outings and preferred activities, and other accommodations and modifications to communicate at school.⁵⁵
56. The March 2019 FIE reviewed Student's physical status, including vision and hearing and recommended glasses. Further evaluations, including functional vision, learning media,

⁵⁰ P. Ex. 9 at 22-26.

⁵¹ P. Ex. 9 at 26-28.

⁵² P. Ex. 9 at 30-33.

⁵³ R. Ex. 12 at 37.

⁵⁴ R. Ex. 11 at 2.

⁵⁵ R. Ex. 11 at 5.

and *** evaluations were recommended.⁵⁶

57. An occupational therapist evaluated Student's OT needs at school, recommending indirect (consultative) services one time a week for 25 minutes, as opposed to the 15 minutes recommended at the October 2018 ARD Committee meeting. Services would include ongoing modifications, adaptations, AT, and other equipment needs.⁵⁷
58. Student was evaluated by a physical therapist to determine current PT needs. The March 2019 FIE recommended continued PT consultative services one time every six weeks for 25 minutes until Student's *** was modified, at which time Student would receive direct services and staff would receive training ***.⁵⁸
59. Intelligence and adaptive behavior were assessed, and Student's Academic/Developmental performance was evaluated in the areas of communication, community use, functional academics, ***, self-direction, and social. Student's AT needs were evaluated and recommendations included continued use of ***.⁵⁹
60. A counseling evaluation found Student did not have an educational need for counseling. The March 2019 FIE also found Student did not show characteristics of an emotional disturbance requiring special education services.⁶⁰

E. April 2019 ARD Committee Meeting

61. Student's ARD Committee convened on April ***, 2019 to review the March 2019 FIE. Student's parents attended and requested additional evaluations in the areas of functional media and ***. They expressed a desire for their *** to participate in class activities consistent with Student's potential. Student's parents reported Student does not want to come to school, but enjoys it when Student does and asked District personnel not to allow Student to avoid tasks by saying 'no'. The ARD Committee found continued eligibility as a student with ***, speech impairment, and ***.⁶¹
62. PLAFFPs were reviewed and the ARD Committee found Student's disabilities impacted participation in the general education setting for all subjects, except ***. Academic progress and functioning were reviewed in the following areas: ***.⁶²
63. The April 2019 ARD Committee reviewed AT and OT needs and services, recommending

⁵⁶ R. Ex. 11 at 7.

⁵⁷ R. Ex. 11 at 12.

⁵⁸ R. Ex. 11 at 14-15.

⁵⁹ R. Ex. 27; R. Ex. 11 at 22-26.

⁶⁰ R. Ex. 9; R. Ex. 10.

⁶¹ P. Ex. 6 at 1, 32.

⁶² P. Ex. 6 at 2-4.

an increase in indirect services from 15 to 25 minutes every six weeks. PT needs and services were reviewed, and Student would receive indirect PT services to support Student's *** teachers on proper ***. The ARD Committee also recommended direct PT services and *** as Student continued ***. Speech therapy services were reviewed, and Student would continue receiving indirect speech therapy services on a consultative basis for one session every six weeks for 25 minutes.⁶³

64. The April 2019 IEP included three *** goals, including using the *** to complete at least one *** assessment; ***, and attending ***. *** activities included: speech therapy, PT, OT, ***, and ***, including field trips and school events. Student would develop ***. Student's parents were given information on how *** providers might serve Student ***. The April 2018 IEP also had a *** (***) of learning to use a keyboard, with an objective of *** by communicating effectively.⁶⁴
65. ***/Reading (***) goals focused on confirming word meanings by responding ***, with an objective of identifying ***. An *** (***) goal focused on speaking during class discussions, with an objective of using *** sentences to describe what is happening in a picture. ***/Reading (***) goals focused on identifying the plot ***, with an objective of confirming what will happen next in a story ***.⁶⁵
66. The April 2019 IEP included a goal to develop *** focused on spending time ***, with an objective of ***. A ***.⁶⁶
67. A Math goal (***) focused on collecting, sorting, and organizing data into categories, with an objective of composing and decomposing numbers ***. A second Math goal (***) focused on identifying geometric ***, with an objective of identifying ***.⁶⁷
68. A Science (***) goal focused on identifying the significance of plants in the environment, with an objective of identifying ***. A Science goal (***) focused on identifying ways in which organisms depend on one another, with an objective of understanding relationships between organisms and their environment. A Social Studies and *** (***) goal focused on identifying state and national parks ***, with an objective of identifying state and national park symbols on a map. A Social Studies and *** (***) goal focused on identifying state and national patriotic symbols, with an objective of responding to related questions.⁶⁸
69. The April 2019 IEP included a Speech/Language goal of improving conversational skills

⁶³ P. Ex. 6 at 3-4.

⁶⁴ P. Ex. 6 at 7-9.

⁶⁵ P. Ex. 6 at 10-13.

⁶⁶ P. Ex. 6 at 13-14.

⁶⁷ P. Ex. 6 at 15-16.

⁶⁸ P. Ex. 6 at 17-18, 19-20.

by increasing ***.⁶⁹

70. The IEP called for progress reports to Student's parents every six weeks.⁷⁰
71. The April 2019 IEP set out instructional accommodations and supports for all subjects. The ARD Committee recommended Student participate in *** and the IEP addressed allowable modifications to state assessments. Student required modifications to the general education curriculum in academic areas and would take *** assessments emphasizing ***. Student had communication limitations affecting access to the general education curriculum in ***, ***, speech therapy, and ***. The April 2019 IEP called for continued use ***. *** included ***.⁷¹
72. Student and parent *** questionnaires revealed Student was ***. The highest area of interest on the ***. *** activities included a student interviews *** in November 2016, November 2017, and April 2019; parent interview in October 2018, teacher interviews in November 2016 and November 2017; *** in October 2018; and *** in October 2018 and April 2019. Student's *** goal was participation in ***. *** goals included use of ***.⁷²
73. Effective August ***, 2019 Student's Schedule of Services called for 225 minutes per week per subject in ***. Student would participate in *** for 225 minutes per week in the general education classroom.⁷³
74. The April 2019 IEP called for direct speech services (one time every six weeks for 25 minutes) and an increase in indirect services from 15 to 25 minutes once every six weeks. Also included were indirect PT services (one time every six weeks for 25 minutes) and indirect OT services (one time every six weeks for 25 minutes).⁷⁴
75. ESY services were not recommended because regression was not noted in any area.⁷⁵

V. STATUTE OF LIMITATIONS

Under the IDEA, a parent may file a due process complaint on any matter relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of

⁶⁹ P. Ex. 6 at 21.

⁷⁰ P. Ex. 6 at 7-21.

⁷¹ P. Ex. 6 at 2, 5, 22-23; P. Ex. 7 at 22-26.

⁷² P. Ex. 6 at 3, 5-6.

⁷³ P. Ex. 6 at 30.

⁷⁴ P. Ex. 6 at 3-4, 30.

⁷⁵ P. Ex. 6 at 30; Tr. at 415.

FAPE within two years of the date the parent knew or should have known about the alleged action forming the basis of the complaint. 20 U.S.C. § 1415(b)(6)(B); 34.C.F.R. § 300.507(a)(1)(2).

The two year limitations period may be more or less if a state has an alternate time limitation for requesting a hearing, in which case state timelines apply. 20 U.S.C. §1415(f)(3)(C); 34 C.F.R. § 300.507(a)(2). Texas regulations require a parent to request a hearing within one year of the date He or she knew or should have known (i.e. discovered) of the alleged action(s) forming the basis of the petition. 19 Tex. Admin. Code § 89.1151(c).

Petitioner alleges Student was deprived a FAPE beginning on December 21, 2017, or one year prior to filing Student's hearing request.⁷⁶ The District raised the one year statute of limitations as an affirmative defense.⁷⁷

Student's causes of action accrued when Student's parent knew, or had reason to know, of the injury forming the basis of the complaint. See, *Doe v. Westerville City Sch. Dist.*, 50 IDELR, 132, p. 5-6 (D.C. Ohio 2008). Here, the discovery date – and thus the relevant time period for the litigation – was settled in advance of the hearing when the parties entered into an agreement under T.R.C.P Rule 11 dated November 21, 2017 specifying Student was provided a FAPE by the District.⁷⁸

Petitioner's claim the District failed to remediate the educational impact of Student's alleged *** that are the subjects of pending federal court litigation during the relevant time period is a proper subject for a due process hearing, and is addressed in this decision. The nature and circumstances of these allegations, however, predate the accrual date for Petitioner's claims (November 22, 2017), and are not subjects of the hearing. The affirmative defense of the statute of limitations is thus inapplicable, and Petitioner may proceed with claims accruing after that date.

⁷⁶ Petitioner's Amended Due Process Complaint (February 4, 2019) at 21.

⁷⁷ Respondent's Response to Amended Due Process Complaint (February 12, 2019) at 2.

⁷⁸ Attachment to Respondent's Response to Amended Due Process Complaint (February 12, 2019).

VI. DISCUSSION

A. Duty to Provide a Free, Appropriate Public Education

Students with disabilities are entitled to a FAPE that provides special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). The District must offer a FAPE to all students with disabilities living in its jurisdiction between the ages of three and 21. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a)(3). The District must provide these students specially designed, personalized instruction with sufficient support services to meet their unique needs so they may receive educational benefit. Instruction and services must be at public expense, and must comport with the IEP developed by an ARD Committee. 20 U.S.C. § 1401(9)(A)-(D); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

B. Individualized Education Program

To meet its obligation to provide a FAPE, a school district must ensure an IEP is in effect at the beginning of each school year. A student's IEP is more than a written statement of annual goals and objectives and how they will be measured, but must instead describe the ARD Committee's recommendations for a student's related services, supplementary supports and services, instructional arrangement, and program modifications. The IEP must also specify the supports and services a student will receive and designate staff to provide them, and include their duration, frequency and location. 34 C.F.R. §§ 300.22; 300.323(a).

C. Burden of Proof

There is no distinction between the burden of proof in an administrative hearing and judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir. 2009). The burden of proof in a due process hearing is on the party challenging the IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th

Cir. 1993); *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1991). The burden of proof is on Petitioner to show the District did not provide Student a FAPE.

D. Individualized Education Program Requirements

In developing an IEP, the ARD Committee must consider strengths, parental concerns for enhancing the student's education, results of the most recent evaluation data, and academic, developmental, and functional needs. The IEP must include a statement of PLAAFPs, including how the student's disability affects involvement and progress in the general education curriculum. 34 C.F.R. § 300.320(a)(1)(i). For a student whose behavior impedes his or her learning or that of others, the IEP must consider positive behavioral interventions and supports and other behavioral strategies. 34 C.F.R. § 300.324(a)(2)(i).

The ARD Committee must review, at least annually, a student's IEP, and make any needed revisions to address lack of expected progress based on re-evaluations, parental information, or the student's anticipated needs, including behavioral needs. 34 C.F.R. § 300.324(b).

An IEP does not need to be the best possible one or designed to maximize a student's potential. However, a school district must provide a student with meaningful educational benefit – and one that is likely to produce progress, not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P.*, 582 F.3d 576, 583 (5th Cir. 2009). The inquiry here is whether the IEP developed and implemented by the District during the relevant time period (November 22, 2017 to present) was reasonably calculated to enable Student to make progress appropriate in light of Student's unique circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

E. Free, Appropriate Public Education

We apply a four-factor test to determine whether a school district's program meets the IDEA requirements, to include whether:

- The program is individualized on the basis of assessment and performance;

- The program is delivered in the least restrictive environment;
- 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 factors are indicators of an appropriate program, guiding the fact-intensive inquiry required to evaluate the educational program offered, and are not given any particular weight or applied a particular way. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). See also, *Klein Indep. Sch. Dist. v. Per Hovem*, 690 F. 3d 390, 397 (5th Cir. 2012).

1. Individualized on the Basis of Assessment and Performance

First, the evidence showed Student's program was individualized on the basis of assessment and performance.

A school district must conduct an FIE that meets certain requirements, and that determines whether the student has a disability, and his or her educational needs. 20 U.S.C. §§ 1414(a)(1)(A); 1414 (a)(1)(C)(i)(I)-(II); (b)(2)(A-C). Assessments and other evaluations must assess the student in all areas of suspected disability. 20 U.S.C. § 1414(b)(3)(B).

An FIE must be completed within 60 days of parental consent or, if the state has its own timeframe, within that timeframe. 20 U.S.C. § 1414(a)(1)(C)(i)(I); 34 C.F.R. § 300.301(c)(1)(i)-(ii). Texas requires completion on an FIE not later than the 45th school day after the school district receives consent. 19 Tex. Admin. Code § 89.1011(b).

ARD Committees may conduct a REED, and as part of any reevaluation, must consider alongside qualified professionals, as appropriate, evaluations and information provided by the parent(s); current, classroom-based, local or state assessments and classroom-based observations; observations by teachers and related service providers; and on the basis of that review, to include input from the student's parent(s), identify what additional data, if any, is needed to determine:

whether the student continues to be eligible for services under the IDEA, and his or her educational needs, PLAAFPs, related service needs, and whether additions or modifications to the student's program are need to allow the student to meet his or her IEP goals and participate, as appropriate, in the general education curriculum. 20 U.S.C. § 1414(c)(1)(A)(i)-(iii); (B)(i)-(iv).

Petitioner alleges the District failed to evaluate Student in all suspected areas of disability, and raises a related claim Student's program did not include psychological services, *** training, and ***. The District conducted an FIE in January 2010, a REED in January 2013, and evaluated for related services as part of Student's November 2016 FIE, all event before the November 22, 2017 accrual date for Petitioner's claims. Student's ARD Committee conducted a REED in December 2018, and requested further testing to determine Student's current educational needs. Student's parents consented immediately, and the March 2019 FIE was completed in the timeline prescribed by the IDEA and state regulations. 20 U.S.C. § 1414(a)(1)(C)(i)(I); 34 C.F.R. § 300.301(c)(1)(i)-(ii); 19 Tex. Admin. Code § 89.1011(b).

The March 2019 FIE evaluated student in all areas of suspected disability, including physical, speech, counseling, OT, PT, *** and yielded recommendations for related services and other educational supports, including further potential areas of assessment. A potential need for counseling, and exclusion through evaluation by a qualified professional, and potential eligibility as a student with an Emotional Disturbance, were also explored. The weight of the credible evidence shows Student was evaluated comprehensively and in a timely manner by the District.

Student's program, to include draft PLAAFPS and IEP goals and objectives prepared and presented to the ARD Committee, was also individualized on the basis of performance. *** one of Student's special education teachers, drafted IEP goals and objectives in academic areas, ***, through a collaborative process of gathering feedback from instructors, and review of grades and progress reports to ascertain the proper content of Student's IEP goals. The goals were drafted to include duration, frequency and location, and designated appropriate District personnel to implement them, to include four certified special education teachers, paraprofessional support, and related service personnel. 34 C.F.R. §§ 300.22; 300.323(a).

Related services may be required to assist a student with a disability with benefitting from special education. 34 C.F.R. § 300.34(a). Student received speech, PT, and OT from qualified related service providers in the recommended amount, duration, and service type (direct versus indirect) in evaluations by qualified related service providers, including the March 2019 FIE.

The April 2018 and April 2019 IEPs called for indirect (consultative) and direct related services in speech, PT, and OT. Modification to the scope of Student's OT services were recommended to account for increased *** needs as Student ***. The weight of the credible evidence shows Student's related service needs were based on identified needs and delivered as directed by Student's IEP.

The April 2018, October 2018, and April 2019 ARD Committees reviewed Student's PLAAFPS, as required. The discussion included attendees familiar with Student and Student's educational needs and PLAAFPS were sufficiently detailed to help inform ARD Committee decisions about how Student's disability impacts involvement and progress in the general education curriculum and the educational placement required to meet Student's academic and non-academic needs, as discussed below. 34 C.F.R. 300.320(a)(1)(i).

The ARD Committee also considered Student's behavior at school, which is good and consistently without behavioral incident, and found it did not impede Student's learning or that of others, and otherwise addressed Student's behavioral needs. The evidence supports the conclusion Student did not exhibit a need for a Behavior Intervention Plan or other behavioral supports. 34 C.F.R. § 300.324(b); *V.P.*, 582 F.3d at 583.

***.

***. *** services can be provided in a special education classroom if provided as specially designed instruction or a related service, and if needed to assist a student with benefitting from special education. ***.

State law requires the ARD Committee to consider, and as appropriate, address the following in a student's IEP:

- ***.

***.

***.

Student's *** services properly focused on Student's *** needs ***, with support in *** and through school-organized *** activities with accommodations to meet Student's *** needs, including related services focused on ***. The evidence showed the District shared information with Student's parents *** and referred them to ***. The District had not yet invited *** to an ARD Committee meeting, but Student ***.

The April 2018, October 2018, and October 2019 IEPs included *** goals addressing ***. Even if, as Petitioner contends, Student's *** goals could be more detailed, the *** as a whole did not deny Student a FAPE when viewed along with Student's IEPs. The IDEA does not require the level of specificity Petitioner seeks in formulating an appropriate ***. See, *C.W. v. City Sch. Dist. of City of New York*, 171 F. Supp. 3d 126, 133-134 (S.D. N.Y. 2016).

Student's IEPs in place during the relevant time period *** addressed Student's *** needs and need to develop ***. The IEPs and ***, when read together, addressed Student's need *** Student will need ***.

2. Least Restrictive Environment

The evidence showed Student was educated in the least restrictive environment.

a. Inclusion of Students with Disabilities

The IDEA expresses a strong preference for inclusion of students with disabilities, and requires them to be educated with students without disabilities to the maximum extent appropriate and in the least restrictive environment appropriate to meet their needs. Special classes, separate schooling, or other removal from the regular educational environment may occur only when the nature or severity of a student's disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(1)(2)(i)-(ii); *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 (5th Cir. 2009).

b. Least Restrictive Educational Environment

Students with disabilities must be educated with students without disabilities to the fullest extent possible, and consideration of a student's least restrictive environment includes an examination of the degree of benefit the student will obtain from an inclusive education. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1049 (5th Cir. 1989). A presumption in favor of the educational placement established by an IEP exists and the party challenging it bears the burden of showing why the educational setting is not appropriate. *Christopher M.*, 933 F.2d at 1291.

The IDEA's regulations require a school district to ensure availability of a continuum of instructional placements to meet the needs of students with disabilities, including instruction in regular classes, special classes, special schools, homes, hospitals, and institutions. 34 C.F.R. § 300.115. State regulations require school districts make available a continuum of instructional arrangements to meet the individualized needs of students with disabilities, including mainstream classes, homebound services, hospital classes, resource room and/or services, self-contained-regular campus (mild, moderate, severe), nonpublic day school, and residential treatment facility. 19 Tex. Admin. Code § 89.63(c).

A two-part test with a presumption in favor of inclusion of students with disabilities determines whether removal from the general education setting is appropriate. First, whether education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. If not, second, whether the school district included the student to the

maximum extent appropriate. *Daniel R.R.*, 874 F.2d at 1045. Consideration of several factors is required to resolve these inquiries, including:

- The nature and severity of the student's disabilities;
- Student's academic achievement;
- The non-academic benefits of regular classroom placement;
- The overall experience in the mainstreamed environment balancing the benefits of regular education and special education to the student; and
- The effect of the student's presence on the regular class, specifically whether the student's behavior so disruptive in the regular classroom that the education of the other students is significantly impaired and whether the student requires so much attention the needs of other students will be ignored. *Id.* at 1048-49.

No single factor in this non-exhaustive list is dispositive. *Id.* at 1048. The analysis must instead be an individualized, fact-specific inquiry that requires careful examination of the nature and severity of the student's disabilities, his or her needs and abilities, and the school district's response to those needs. *Id.* The issue of whether an IEP was implemented in the least restrictive environment is a relevant factor in making the overall determination whether the school district's program provided the student FAPE. *Daniel R.R.*, 874 F.2d at 1049; *Michael F.*, 118 F.3d at 253; *R.H. v. Plano Ind. Sch. Dist.*, 607 F. 3d 1003, 1012-1013 (5th Cir. 2010).

c. Student's Educational Placement

Student's educational placement was ***. Student *** receives academic instruction consistent from a special education certified teacher and paraprofessionals with modified grade-level curriculum tracking the TEKS.

Student participated *** in the general education classroom as directed by Student's April 2018 IEP, and *** as directed by Student's April 2019 IEP. These classes allow student to participate in school-based activities at the same time Student's peers do so, and such inclusion and cross-exposure is consistent with the IDEA's strong preference for an included education for *** students with *** disabilities.

However, while the IDEA's preference for inclusion is strong, consideration of a student's appropriate educational setting must take into account the nature and severity of a student's disabilities. Here, Student's multiple disabilities significantly impact Student's ability to be educated entirely in the general education classroom, and Student requires small group instruction to generalize concepts and materials. The ARD Committee's decision to place Student in *** was supported by Student's needs and circumstances.

Balancing the competing factors, Student was included to the maximum extent appropriate. The evidence shows Student was educated in the least restrictive setting and Petitioner did not meet Petitioner's burden of showing the educational setting in Student's IEP was inappropriate and Student requires a different educational setting. *Daniel R.R.*, 874 F.2d at 1049; 34 C.F.R. § 300.114.

3. Services Provided in a Coordinated and Collaborative Manner by Key Stakeholders

Third, the evidence showed Student's services were provided in a coordinated and collaborative manner by key stakeholders.

A school district must convene ARD Committee meetings consisting of the parents, a regular education and special education teacher, school district representative, an individual who can interpret instructional implications of evaluations, and other as appropriate, including the student. 34 C.F.R. § 300.321(a)(1)-(7).

Student's parents are required members of the ARD Committee and participated in all meetings held during the relevant time period, and parental goals of increasing *** and *** were considered and addressed in Student's IEP. District members of the ARD Committee included a special education teacher, administrator, and relevant related services providers, including a speech therapist, occupational therapist, and physical therapist. 34 C.F.R. § 300.321(a).

Student's IEPs also each included PLAAFPs developed by relevant ARD Committee members or other personnel familiar with Student's performance at school. 34 C.F.R. § 300.320(a)(1)(i).

4. Academic and Non-Academic Benefits

Fourth, the evidence supports the conclusion Student's program was reasonably calculated to provide meaningful educational benefit. *Rowley*, 458 U.S. at 206-207. The evidence also shows Student's program was appropriately ambitious in light of Student's unique circumstances. *Andrew F.*, 137 S. Ct. at 992.

The IDEA does not require an IEP to guarantee a certain level of accomplishment. It must instead be reasonably calculated to meet the student's educational needs given his or her unique circumstances. *Id.* A school district is not required to provide a student the best possible education, and improvement in every academic and non-academic area is not required to show benefit. The issue is thus not whether a school district could have done more, but whether the student received an educational benefit. *V.P.*, 582 F. 2d at 590. Importantly, whether a student demonstrates positive academic and non-academic benefits is 'one of the most critical factors in this analysis.' *Renee J. v. Houston Indep. Sch. Dist.*, 913 F.3d 523, 529 (5th Cir. 2019).

a. Academic Benefits

Academic benefit is not always the proper measure of progress, particularly for a student, like Student, ***. Academic benefit, however, can be shown by progress on IEP goals and objectives. While Student's goals and objectives reflect a need for assistance from personnel, including prompting and *** assistance, Student's academic goals track modified grade level TEKS and are tailored to Student's communication and other support needs. While Student progresses at a slower rate than peers due to Student's disabilities, progress is consistent with Student's level of disability. Student received academic benefits from Student's educational program. See, *Houston Indep. Sch. Dist. v. Bobby R.*, 328 F.3d 804 (5th Cir. 2003).

b. Non-Academic Benefits

Student received non-academic benefits as well. As discussed above, Student's IEP called for opportunities to interact with typically developing peers to the maximum extent appropriate through participation in ***.

5. Conclusion

The basic floor of opportunity standard set forth in *Rowley* does not require a district to remediate a student's disability. When the four requirements set forth in *Cypress-Fairbanks v. Michael F.*, are met, a District satisfies its FAPE obligation. The weight of the credible evidence shows Student's program was individualized on the basis of assessment and performance, delivered in the least restrictive environment, services were provided in a coordinated, collaborative manner by the key stakeholders, and Student made academic and non-academic progress. When Student's program is considered as a whole, Student was provided a FAPE by the District. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012)].

F. Procedural Issues

Petitioner raised a procedural allegation as to whether the District failed to provide Student's parents adequate progress reports. To prevail, Petitioner must show this violation significantly impeded Student's or Student's parents' rights to a FAPE, parental opportunity to participate in the decision-making process regarding the provision of a FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2)(i)-(iii).

Petitioner did not meet Petitioner's burden of proving the District violated parental procedural rights by failing to provide timely and adequate progress reports. The IDEA requires periodic reports to parents on the progress a student is making on his or her goals, such as through quarterly or other periodic reports or concurrent with report cards. 34 C.F.R. § 300.320(a)(3)(i)-(ii). The District sends progress reports home in students' homework folder every six weeks. Receipt of the report is confirmed by parental signature.

*** one of Student's special education teachers prepared Student's progress reports in all areas, ***. The District's software program generates a progress report. Student's goals and objectives called for 70% or higher percentage of mastery. While the progress reports provided to Student's parents did not convey the percentage of mastery of a particular goal or objective or reflect the number of choices or trials to achieve mastery, such detail is not required. The progress reports were provided in a timely manner and conveyed Student's progress generally, as required. The District therefore met its obligation as to progress reports.


VII. CONCLUSIONS OF LAW

1. Petitioner did not meet Petitioner's burden of proof as the party challenging a student's IEP and educational placement. *Schaffer v. Weast*, 546 U.S. 49 (2005).
2. Student was provided a FAPE during the relevant time period and Student's IEPs were appropriately ambitious and reasonably calculated to meet Student's needs in light of Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017).
3. The District did not violate parental procedural rights under the IDEA as to progress reports. 34 C.F.R. § 300.513(a); 34 C.F.R. § 300.320(a).

VIII. ORDERS

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

SIGNED January 6, 2020.



Kathryn Lewis
Special Education Hearing Officer
For the State of Texas

IX. NOTICE TO PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20. U.S.C. § 1415(i)(2); 19 Tex. Admin. Code Sec. 89.1185(n).