

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT,
bnf PARENT & PARENT,
Petitioner,**

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v.

DOCKET NO. 129-SE-0116

**BULLARD INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, STUDENT bnf PARENT & PARENT (“Petitioner” or “the Student”) brings this action against the Respondent Bullard Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq. (IDEA) and its implementing state and federal regulations.

The fundamental issue in this case is whether the school district failed to provide Student a free, appropriate public education (FAPE) within the meaning of the IDEA throughout Student’s enrollment until Student’s withdrawal from the public school in *** and whether private placement at school district expense is an appropriate remedy.

Party Representatives

Petitioner was represented by Petitioner’s legal counsel Dorene Philpot of The Philpot Law Office, P.C. Respondent was represented by its legal counsel Holly Wardell with the law firm of Eichelbaum Wardell Hansen Powell & Mehl, P.C.

Resolution Session and Mediation

The parties waived the Resolution Session in writing and attempted mediation instead. The parties convened mediation on March 7, 2016 but were not successful in reaching an agreement.

Due Process Hearing

This case was continued once in order to allow the parties the opportunity of attempting mediation before proceeding with further litigation. The decision due date was extended at the request of both parties twice; first, to accommodate the new hearing date and mediation; second to provide the parties with an opportunity to submit written closing briefs with access to the hearing transcript and time for the hearing officer to review and consider the briefs in preparing the Decision.

The due process hearing was conducted on April 19-21, 2016. Petitioner continued to be

represented by Petitioner's attorney Dorene Philpot, assisted at the hearing by her co-counsel Sharon Ramage of the Ramage Law Group. Student's father attended portions of the hearing ***.¹ Student's mother did not attend the hearing except to testify.² Respondent continued to be represented by its attorney Holly Wardell assisted at the hearing by her co-counsel Abraham Barker and Amy Foster.

In addition ***, Principal at the school district's ***, attended the hearing as the school district's party representative. The hearing was open to the public at Student's request. The hearing was recorded and transcribed by a certified court reporter. Both parties timely filed their respective written closing arguments on or before May 23, 2016. The decision of the hearing officer was extended to June 24, 2016 at the request of both parties.

Petitioner's Issues

Petitioner confirmed the following issues for decision in this case:

1. Whether the school district denied Student the right to a free, appropriate public education (FAPE) within the meaning of the Individuals with Disabilities Education Act (IDEA) beginning with Student's initial enrollment in the school district up through Student's withdrawal from the public school in ***; including specifically the following sub-issues:
 - a. Whether the school district failed to devise appropriate Individualized Education Plans (IEPs) for Student;
 - b. Whether the school district failed to properly implement Student's IEP as written and/or whether the school district revised Student's IEP without parental input;
 - c. Whether the school district failed to properly evaluate Student;
 - d. Whether the school district failed to comply with student and parental procedural rights under the IDEA resulting in the denial of a FAPE and/or significantly impeding the parents' opportunity to participate in the educational decision-making process; and,
 - e. Whether the Student and/or Student's parents were subjected to bullying and harassment that rose to the level of a denial of a FAPE.
2. Whether the school district violated Student's rights under the Americans with Disabilities Act (ADA), the Family Educational Rights and Privacy Act (FERPA), No Child Left Behind Act (NCLB), Section 1983 of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964 and other statutes and laws listed on page 12 of Petitioner's Complaint.
3. Whether the exceptions to the one year statute of limitations rule should be applied to

¹ Due Process Hearing Transcript, Volume I, pp. 176-177

² Due Process Hearing Transcript, Volume III, pp. 964-965

Petitioner's IDEA claims in this case; specifically whether Student's parents were prevented from filing a request for a due process hearing because:

- a. the school district made misrepresentations to Student's parents and/or
- b. the school district withheld information from Student's parents.

Petitioner's Requests for Relief

Petitioner confirmed the following items of requested relief:

1. Findings of fact and conclusions of law in Student's favor;
2. The school district revise and implement an IEP in the least restrictive environment that meets Student's needs including, but not limited to, changes or additions in services, accommodations, modifications, IEP goals and objectives, and anything else the hearing officer deems appropriate;
3. The school district conduct evaluations in all areas of suspected disability including funding one or more Individual Educational Evaluations (IEEs) at school district expense;

or in the alternative

4. The school district reimburse Student's parents for: (i) past outside private services, evaluations, and related mileage; and, (ii) reimbursement for the cost of prospective private placement, evaluations, related services, and, related mileage for a time period the hearing officer concludes is appropriate; and,
5. Any other relief the hearing officer deems appropriate or as recommended by Student's experts and evaluators including, but not limited to, compensatory educational services.

In Student's Complaint Petitioner also stated an intent to seek expert witness and attorney's fees from the school district in an appropriate forum. During the initial prehearing telephone conference conducted on January 28, 2016 Petitioner conceded the hearing officer lacks authority to make such an award. (Transcript Prehearing Telephone Conference p. 14, January 28, 2016).

Respondent's Legal Position

The school district contends it provided Student with FAPE and complied with all procedural requirements under the IDEA. The school district confirmed submission of the following additional legal issues:

6. Whether the hearing officer has jurisdiction over claims arising under any law other than the IDEA; and,
7. Whether the one year statute of limitations should be applied to bar Petitioner's IDEA

claims that arose outside the limitations period.

Petitioner's claims arising under any laws other than the IDEA were dismissed as outside the hearing officer's jurisdiction in the set of Order issued in this case on January 28, 2016. (Order on Request for Continuance and Extension of Statutory Due Date for Good Cause and for First Revised Scheduling Order, p. 5).

FINDINGS OF FACT

Educational History

1. Student is a ***. (Transcript, Volume III, pp. 971, 1168)(referred to hereafter as "Tr. Vol. ___:___"). Student *** and *** other children. Student is very *** and ***- Student loves ***. Student is ***. (Tr. Vol. III: 971-972) (Tr. Vol. III: 989-990). Student exhibits a developmental disability that significantly affects ***. Student has a ***. (Tr. Vol. II:786-787)(Joint Exhibit 9, p. 119)(referred to hereafter as "J. Ex. ___: ___").
2. Student first enrolled in the school district in ***. Student was previously served by a school district in *** where Student received *** (***) services. The school district received some educational records from the *** school district. (Tr. Vol. I: 103, 110) (Tr. Vol. III: 1173) (J. Ex. 1:3) (Respondent's Exhibit 8, p. 478) (referred to hereafter as "R. Ex. ___:___"). The *** school district identified Student with "developmental delay" in adaptive behavior and *** skills. ***. (Tr. Vol. I: 104) (Petitioner's Exhibit 1, p. 4) (referred to hereafter as "P. Ex. ___:___"). The *** *** program used some *** with Student. (P. Ex. 3).
3. A temporary Admission, Review & Dismissal Committee (ARD) met on *** to match services provided by the *** school district, including placement into a *** (***) and occupational therapy (OT) as a related service. Student's mother participated in the temporary ARD. (Tr. I: 110, 313) (Tr. III: 842, 1044) (J. Ex. 1:2).
4. A follow up ARD was held on ***. (Tr. Vol. I: 110) (P. Ex. 23) (R. Ex. 2). The school district continued to match services from the school district in ***. The ARD agreed on the need to conduct a Full Individual Evaluation (FIE) the following school year. The purpose of the FIE was to determine whether Student met eligibility criteria as a student with autism and to conduct additional evaluations in the areas of speech, cognition, adaptive behavior, academic skills, and OT. (R. Ex. 2). Student's mother participated in this ARD and consented to the FIE. (Tr. Vol. III: 1044) (J. Ex. 9: 122, 126). (R. Ex. 2:70). The autism evaluation was included in the FIE at parental request. (Tr. Vol. II: 534).
5. Student was educated in the *** program from *** through *** and for the *** and *** school years. (Tr. Vol. III: 969). Student was then placed in the *** program beginning in the *** of the *** school year. Both *** and *** are special education programs based on a regular *** campus. (Tr. Vol. I: 361) (J. Ex. 3:20-21) (P. Ex. 6:63, 65). Special education

services are provided through the school district's membership in the Cherokee County Shared Services Arrangement (SSA). (Tr. Vol. I: 82) (Tr. Vol. II: 720).

6. During the *** school year Student did not return to school after ***. (Tr. Vol. I: 219) (Tr. Vol. III: 969-970, 1046, 1169) (R. Ex. 8:420). *** (Tr. Vol. III: 970, 1181-1182)(R. Ex. 8: 424-427, 432) (R. Ex. 11:602). Student returned to the school district on *** and finished the *** school year. (Tr. Vol. III: 969). The school district did not know where Student was during this time but apparently Student attended school in ***. (Tr. Vol. II: 526). However, the school district never received a request for records from another school district during this time period. (Tr. Vol. III: 1169-1170).
7. An ARD convened on *** to plan for the next school year and to update IEP goals and objectives. (R. Ex. 1:21, 33). OT, speech, and transportation were provided as related services. Student's mother participated in the ARD by telephone. (Tr. Vol. III: 1044)(R. Ex. 1:21, 31). The *** ARD reviewed and relied on the *** FIE in making decisions about Student's educational program. (P. Ex. 24:1). OT services were increased to *** minutes of direct service for *** of each *** week grading period – with the *** week for consultation with teaching staff, record keeping and review, and to determine whether OT therapy was being carried over in the classroom. (Tr. Vol. III: 903-904, 940-941)(P. Ex. 24:12). Speech services continued to be consultative for *** minutes *** every *** week grading period. (P. Ex. 24:18).
8. Another ARD convened on *** for the purpose of changing Student's speech services from consult to direct. (Tr. Vol. I: 165-166) (J. Ex. 5:36). Direct speech services were now provided for *** minutes weekly for *** of each *** week grading period. (Tr. Vol. II: 737)(J. Ex. 5:40). The *** ARD also adjusted Student's direct OT services to *** minutes *** week of each *** week grading period – a decrease in direct services from the *** ARD. (P. Ex. 24:11-12). Student's mother did not attend this ARD but gave permission for the ARD to proceed without her. (Tr. Vol. III: 1044) (J. Ex. 5:43, 46).
9. An annual ARD convened on ***. (R. Ex. 6). Student's mother participated by telephone. (J. Ex. 6: 67). IEP goals were reviewed and updated. New speech goals were agreed upon. (J. Ex. 6: 54-56, 67). A set of accommodations to adapt instruction and to meet behavioral and communication needs was also approved by the ARD. (J. Ex. 6:57, 68).

Medical History

10. Student was diagnosed with a *** known as *** (***). (P. Ex. 12). Student's ***. (P. Ex.1:5) (P. Ex. 13:29). Student has a history of *** since then. (P. Ex. 13:1-2, 30). Student's parents did not provide any *** documentation to the school district about this *** except for their own verbal reports. In *** *** Student ***. (Tr. Vol. II: 502, 511)(P. Ex. 9:6). ***. (Tr. Vol. I: 311) (Tr. Vol. III: 1120, 1170-1171).

School District's FIE

11. The school district's FIE was completed on ***. (J. Ex. 9). Two educational diagnosticians, two licensed specialists in school psychology (LSSPs), an occupational therapist (the OT), a speech/language pathologist and a school nurse all participated in the FIE. The FIE team conducted classroom observations, structured parent and teacher interviews, and health screenings. A variety of diagnostic instruments were used in conducting the FIE. (Tr. Vol. III: 843-845)(J. Ex. 2:101) (J. Ex. 9:104). The FIE included speech and occupational therapy (OT) evaluations. (J. Ex. 9: 101-104). Student's three year re-evaluation is due ***. (Tr. Vol. I: 152, 184) (P. Ex. 24).
12. The FIE did not include a Functional Behavior Assessment (FBA). (Tr. Vol. I: 118-119) (J. Ex. 9). The purpose of a FBA is to determine what the function or behavioral triggers are for a student's behavior. (Tr. Vol. II: 464). Identifying the antecedents and consequences of behavior is part of this process. Observations in a variety of settings (at home and at school) in structured and unstructured environments are also components of a FBA. Data is gathered throughout and analyzed. A hypothesis is then formulated as to the function of the behavior. (Tr. Vol. II: 477-478). A FBA is appropriate when a student's maladaptive behaviors impede the student's learning. (Tr. Vol. I: 113-114, 129) (Tr. Vol II: 582) (P. Ex. 6:10-11, 15) (P. Ex. 7: 60-61, 64) (P. Ex. 16:3).
13. The *** FIE did not identify Student as a student with autism. Instead, the FIE identified Student's eligibility for special education as a student with a Speech Impairment (SI) and an Intellectual Disability (ID). (J. Ex. 9: 117-119). However, there was a serious scoring error in one of the instruments used in the autism evaluation of the FIE. Had the data been scored correctly Student could have been identified as a student in the "severe autism" range on that instrument. The FIE also lacked adequate and unclear observation data. These deficits in the *** FIE were identified by Petitioner's expert witness – a clinical neuropsychologist and LSSP - as a result of this litigation. (Tr. Vol. II: 643, 647-649, 651, 653-663, 666-667, 669- 703) (P. Ex. 2:2-3) (P. Ex. 21:1). Subsequent ARD meetings continued to rely on the *** FIE. (Tr. Vol. I: 135, 152-153) (J. Ex. 3) (J. Ex. 5) (J. Ex. 6:48, 67) (P. Ex. 23) (P. Ex. 24:1, 20) (R. Ex.1) (R. Ex. 2). Each ARD designed Student's IEP, in part, on the basis of the findings stated in the FIE. (Tr. Vol. I: 153, 171).

IEP ***

14. An ARD convened on *** to review and discuss the FIE. The ARD confirmed Student's eligibility for special education as a student with a speech impairment and intellectual disability but not as a student with autism. (Tr. Vol. I: 311-312) (J. Ex. 3:7). An IEP was designed at the ARD (J. Ex. 3:9-16). Student received *** minutes of direct OT services *** week of each *** week grading period and *** minutes of consult speech services *** every *** week grading period. (Tr. Vol. III: 845-846) (J. Ex. 3:20).
15. Consult speech services meant the speech/language therapist went into the classroom and worked with the classroom teacher on communication strategies to use with Student. (Tr.

Vol. II: 730). No Behavior Intervention Plan (BIP) was designed as a component of the IEP. (Tr. Vol. I: 313) (J. 3:22). ***. (J. Ex. 3:25). Student's mother participated in this ARD. (Tr. Vol. III: 1044)(J. Ex. 3:34).

16. IEP goals and objectives were designed on the basis of Student's present levels of academic achievement and functional performance. (J. Ex. 3:7). IEP goals and objectives addressed *** (***), behavior (specifically ***), *** skills, and *** skills ***. (J. Ex. 3: 9-14). The OT recommended exploring Student's need for a Sensory Therapeutic Experience Plan (STEP) – also known as a sensory diet. (Tr. Vol. III: 846-847).
17. A set of modifications and accommodations were included as a component of the educational plan by adapting instruction, managing behavior and the use of *** to facilitate ***. A set of *** services was also identified in the IEP. (J. Ex. 3:15). The duration of services for this IEP was from *** to ***. (J. Ex. 3:9-11) with the exception of speech services which went from *** to ***. (J. Ex. 3:12).

IEP ***

18. An ARD met on *** to review Student's progress. IEP goals and objectives to address ***, and communication were designed. *** goals and objectives addressed Student's *** and appropriate behavior needs (such as ***). Some IEP goals and objectives were designed to finish out the current school year. (R. Ex. 1: 4-10, 17). Additional IEP goals and objectives for ***, ***, and communication were designed for the upcoming school year beginning in *** through ***. (R. Ex. 1: 8-10, 17, 19, 21). The goals and objectives were designed on the basis of Student's present levels of academic achievement and functional performance. (R. Ex. 1: 2, 11).
19. A specific set of IEP goals and objectives for speech therapy and OT were included in the IEP. (R. Ex. 1: 7, 11). The duration of the related services IEPs was for one year: from *** to ***. (R. Ex. 1: 7, 11). ***, and other *** skills were addressed in the OT IEP. (R. Ex. 1: 11). Communicating preferences using a variety of communication modes, producing environmental sounds, and working on receptive language were addressed in the speech therapy IEP. (R. Ex. 1:7).
20. A set of modifications and accommodations were included as a component of the *** IEP by adapting instruction, managing behavior (including positive reinforcement) and the use of *** to facilitate ***. A set of *** services was also identified in the IEP. (R. Ex. 1:12).

Speech Services

21. Student did not receive direct 1:1 speech therapy services for the first *** months of Student's enrollment because the *** *** where Student could *** instead of in a therapy setting. (Tr. Vol. I: 137, 165) (Tr. Vol. II: 443, 722). A *** is a *** and opportunities for incidental learning. A *** involves *** all the things happening in the classroom all day

long and working on ***. Both the *** and *** classrooms are ***. (Tr. Vol. II: 752-753).

22. Consult speech services are appropriate with a *** in a classroom environment because of limited attention skills – direct services are appropriate when the child is able to participate in pull-out therapy services. (Tr. Vol. II: 730-732)(P. Ex. 15:4). Student initially received speech consult services in the *** classroom. Direct speech services were later provided when Student demonstrated readiness for pull-out therapy. (Tr. Vol. II: 732-733). Student's speech therapy services beginning in *** were supervised by a certified speech/language pathologist – the direct therapy was provided by a speech pathology assistant. (Tr. Vol. II: 720-721, 723-725).
23. The speech services did not include the use of ***. Although *** can be effective for some children the use of ***. (Tr. Vol. II: 734-735). For students with intellectual disabilities the use of *** may not be appropriate because some of the ***. The use of *** also requires *** skills and good cognitive and recall skills. (Tr. Vol. II: 725).
24. Total communication incorporates different *** such as the use of signs, pictures, gestures, and lip reading. (Tr. Vol. II: 725, 773). It was originally designed for use with students with hearing impairments. (Tr. Vol. II: 725, 773). Total communication includes a variety of modes whether it is through a core fringe board, a PECS system, sign language, hand signals, or non-verbal gestures. It might include augmentative communication or verbal communication if possible. In sum, total communication is a strategy or technique that involves all ***. (Tr. Vol. I: 368, 418) (Tr. Vol. II: 418-419, 436).

Behavioral Issues

25. Student initially exhibited inappropriate behaviors in the *** program – one of the reasons for Student's placement there. (Tr. Vol. I: 89-90). Student communicated primarily ***. (Tr. Vol. I: 319-320). Some of Student's maladaptive behaviors included: ***. (Tr. Vol. I: 90-91, 113-114, 319-320) (J. Ex. 3:7) (P. Ex. 11: 11, 13) (P. Ex. 15:10) (P. Ex. 16: 3-4) (P. Ex. 23:5) (R. Ex. 11:596). Some of Student's behaviors impeded Student's learning. (Tr. Vol. I: 89-90) (R. Ex. 11: 596). Aggressive and socially appropriate behaviors were addressed in the *** program. (Tr. Vol. I: 151).
26. In *** Student's *** teacher completed *** at parental request so the family could ***. (Tr. Vol. I: 318-319). Student had been in her class for approximately ***. At the time she noted Student was ***, did not ***, could barely ***, and communicated ***. Student required behavior modification strategies and almost 1:1 student to teacher ratio at school for certain tasks and activities. (Tr. Vol. I: 319-320, 322-323) (P. Ex. 11: 10-11).
27. On *** Student's parents obtained an outside third party evaluation from Dr. *** – a psychologist. (P. Ex. 12). The purpose of Dr. ***'s evaluation was to support Student's ***. (Tr. Vol. II: 508). Dr. *** concluded Student met the diagnostic criteria under the DSM-IV as a student with autistic disorder. (Tr. Vol. II: 536)(P. Ex. 12:3). Student's

eligibility for *** was based on ***, autism, and intellectual disability. (P. Ex. 11:16). Dr. ***'s evaluation did not include an observation of Student at school nor did Dr. *** interview Student's teachers. (P. Ex. 12). The school district did not receive a copy of Dr. ***'s evaluation until this litigation. (Tr. Vol. II: 616-617)(Tr. Vol. III: 1044-1045, 1173).

Sensory Issues and OT Services

28. In the *** classroom Student exhibited a serious problem integrating *** with motor output, ***, and limited Student's ***. (Tr. Vol. I: 325-326) (P. Ex. 11: 13-14). Student also ***, exhibited sensory integration issues such as sensitivity to sound, ***, and was easily frustrated. (Tr. Vol. I: 328, 333) (P. Ex. 11:13-14). The *** OT evaluation confirmed Student demonstrated sensory seeking oral motor behavior. (Tr. Vol. I: 103) (Tr. Vol. III: 846, 848) (J. Ex. 9:104) (P. Ex. 11:14). Some of Student's behavioral issues are related to Student's sensory issues. (Tr. Vol. I: 144-145).
29. The OT evaluation noted the need to develop a Sensory Therapeutic Experiences Plan (Tr. Vol. III: 846, 861) (J. Ex. 9:3-4). Developing a sensory plan is a process that includes school staff and parents. It is not necessarily a written plan but instead is fluid and evolving. (Tr. Vol. III: 847, 861-862). When a student's sensory needs are met the student is more alert and able to concentrate thereby facilitating learning and vocabulary development. Behavioral issues usually decrease with vocabulary development. (Tr. Vol. II: 429, 449). A sensory plan involves a number of activities providing *** throughout the day to meet sensory needs thereby reducing continual craving for ***. (Tr. Vol. II: 451).
30. To address the *** behavior the OT provided Student with "****" – *** that provided Student with *** input as replacement for *** ***, such as ***. The OT worked with the *** teacher to implement the replacements. (Tr. Vol. III: 850-851). As a result Student's *** behavior significantly decreased. (Tr. Vol. III: 852, 893).
31. The purpose of OT services is to help the student benefit from the academic placement not to remediate or intervene in non-OT related areas or areas that do not affect the student's academic placement. (Tr. Vol. III: 877). The purpose of OT services is to support the student's IEP in the classroom. (Tr. Vol. III: 889). OT treatment plans are based on a student's needs not the student's eligibility classification. (Tr. Vol. III: 866-867). OT therapy was implemented in both the classroom and through direct therapy. (Tr. Vol. III: 858).
32. The OT conferred and collaborated with the classroom teacher about skills worked on in therapy and what the teaching staff needed to implement in the classroom. (Tr. Vol. III: 858-859). Interactions between the OT and the classroom teacher were in-depth, regular, and frequent. (Tr. Vol. I: 347-348). (Tr. Vol. III: 936-937, 1038-1039). They were constantly strategizing. (Tr. Vol. III: 1033).
33. By *** Student met Student's OT goal of accepting therapeutic experiences, met and

exceeded the goal of completing ***, and met Student's goal of ***. (Tr. Vol. III: 867-870). On *** the occupational therapist planned to discharge Student from OT services after reviewing Student's IEP. (P. Ex. 6:1-4, 20). Student was dismissed from OT services at the *** ARD because Student mastered all Student's OT goals with the exception of ***. (Tr. Vol. I: 372) (Tr. Vol. III: 874-875).

34. A physician's prescription was needed to receive OT services (P. Ex. 15:14). A physician's prescription for OT is ***. (Tr. Vol. I; 217). Therapists who provide OT services are ***. A physician's prescription is required under the OT licensure. (Tr. Vol. I: 216).

*** Classroom

35. The *** class had a low student to teacher ratio and followed a structured, daily routine. (Tr. Vol. I: 315, 318). (Tr. Vol. III: 984-989, 995, 997-999, 1000-1001). Student especially enjoyed *** and responded well to it. (Tr. Vol. III: 986). The *** program worked on *** skills and *** daily. (Tr. Vol. I: 335-336) (Tr. Vol. III: 994, 1003) (R. Ex. 9:528, 531).
36. The *** classroom was a ***. (Tr. Vol. III: 878). A *** is one with lots of opportunities for ***. A *** includes lots of ***. The *** classroom is set up with a ***. (Tr. Vol. III: 973-975, 979-981). The *** classroom included a ***. (Tr. Vol. III: 975). Student enjoyed many of the *** experiences in the *** classroom. (Tr. Vol. III: 974-975, 979).
37. The classroom was set up with ***: ***. (Tr. Vol. III: 981). The *** program included 1:1 instructional time with the teacher or paraprofessional on various academic activities. (Tr. Vol. III: 995-997). Each student had a designated *** (Tr. Vol. III: 976-977). Daily group lessons on *** were taught during ***. (Tr. Vol. III: 977-978). *** included vocabulary development and identifying feelings. (Tr. Vol. III: 978, 1016-1017)(R. Ex.: 535).
38. Regular field trips were a component of the *** program. (Tr. Vol. III: 1021-1022). Student went to PE, the lunch room, and recess with non-disabled peers. (Tr. Vol. I: 313-314, 358) (J. Ex. 1) (P. Ex.2: 68). Student enjoyed ***. (Tr. Vol. III: 989-990).
39. Student especially loved *** classroom daily. Student had a very positive reaction to ***. Student began to *** with the introduction of *** into the classroom. Student was ***. *** had a calming effect on Student. (Tr. Vol. III: 971-972)(R. Ex. 9:519, 527).
40. A licensed specialist in school psychology (LSSP) came into the *** classroom to observe Student and collaborated with the teacher giving her ideas, recommendations, and suggestions to meet Student's behavioral needs. (Tr. Vol. III: 1034).
41. The *** teacher communicated with Student's parents frequently. (Tr. Vol. III: 1005-1006). There were phone conferences, ***, copies of work sent home, and personal face to face time. Teacher-parent communication was at least several times a week if not daily. (Tr. Vol. III: 1006-1007, 1017). Student's parents shared personal information with the ***

teacher during times of family distress. (Tr. Vol. III: 1045-1047).

42. Student's communication needs were addressed using the *** system – ***. (Tr. Vol. I: 127, 130-131, 180) (Tr. Vol. III: 188, 1054). (P. 23: 10) (P. Ex. 24:2). Student's *** teacher attempted to use an application known as ***. Student preferred *** so its use was discontinued. (Tr. Vol. III: 1004).
43. Unfortunately *** destroyed a significant number of documents including work samples and other data related to Student's educational program and progress. (Tr. Vol. III: 884-885, 1017-1019, 1058-1059).

44. Student was not *** when Student first enrolled in the school district. *** was a regular component of the *** program for all students. (Tr. Vol. I: 97). By *** Student ***. School staff *** to address parental concerns Student might ***. Student did not *** during the day at school. (Tr. Vol. I: 336-337). In the *** class Student *** on a regular basis. The school district continued to keep *** provided by Student's parents. However, after the first six weeks in *** Student ***. (Tr. Vol. III: 922, 1134-1136)(P. Ex. 7:7, 32).

*** Issues

45. Student exhibited severe *** issues throughout Student's time in the school district. Student *** with the exception of *** which Student ***. (Tr. Vol. I: 107, 342) (Tr. Vol. III: 853, 1143-1145) (P. Ex. 7:15) (P. Ex. 9:1) (P. Ex. 15:7). The *** FIE noted staff and parental concerns about Student's *** and Student's behavior ***. (J. Ex. 9:5) (P. Ex. 2:73, 75) (P. Ex. 3:6, 61).
46. Student's *** may be either a learned behavior or sensory-based. (Tr. Vol. III: 906-907). If sensory-based, treatment would begin with determining what type of *** Student is seeking and then find an alternative, safe way for Student to access that input. (Tr. Vol. II: 468-469). A variety of assessments can be conducted to determine whether Student's *** issues are sensory-based or something else including intensive parent interviews, medical information, *** consult, and a preference assessment. (Tr. Vol. II: 468-470).
47. Student also ***. Student attempted to ***. Student also ***. (Tr. Vol. I: 344)(Tr. Vol. III: 862)(P. Ex. 7:20, 37-38, 40, 46-47, 50, 57, 64, 66, 68-69, 70). At times Student ***. (Tr. Vol. III: 991, 1150-1151, 1153)(P. Ex. 7:10, 15, 19, 42, 54, 58, 61) (P. Ex. 16:3).
48. Student's *** teacher and the campus principal were very concerned about Student's ***. (Tr. Vol. I: 83, 338). Student's behavior *** *** continued in the *** class during the *** school year. (Tr. Vol. II: 531). Student's *** issues need to be addressed so that Student can acquire the skills ***. (Tr. Vol. III: 852-853).

49. Student's *** may be related to a *** known as "****." (Tr. Vol. I: 101, 329). *** (Tr. Vol. II: 467). Only a physician can diagnose *** as a ****. (Tr. Vol II: 489). Although the school district did not invite Student's physician to an ARD meeting the *** teacher shared school information and solicited the physician's guidance in addressing *** and *** issues. (Tr. Vol. III: 911, 1042, 1044)(R. Ex. 11: 596).
50. Learning to *** is an important life skill. (Tr. Vol. II: 471) (Tr. Vol. III: 908). Student's *** needs to be addressed before developing a *** protocol. A *** protocol requires support from both home and school -- wherever Student is ***. (Tr. Vol. III: 909). Student's parents did not support a **** program at school. IEP *** were discontinued at parental request following receipt of a letter from Student's ***. The physician directed school staff to allow Student to continue *** ***. (Tr. Vol. III: 874, 875-876, 932-933, 1029)(J. Ex. 6: 63, 67).
51. Student needs a program to address Student's *** issues and *** – this is essential for Student's neurological and physical development and overall health. (Tr. Vol. I: 264). *** and *** issues are two separate problems and should be addressed by separate intervention plans. (Tr. Vol. II: 469). An occupational therapist is qualified to develop and implement *** therapy or a *** protocol. (Tr. Vol. III: 908-909). *** clinics are available from Dr. *** at *** and at ***. (Tr. Vol. I: 265) (Tr. Vol. II: 461-463, 471-472) (P. Ex. 19).
52. School district staff requested parental consent to confer and collaborate with Student's medical providers on multiple occasions to gather information about Student's *** issues. (Tr. Vol. I: 86, 343-345, 1073) (P. Ex. 16:3). Parental consent was provided at one point but later revoked. Revocation of parental consent prevented school staff from conferring directly with Student's physician, *** and other medical providers. (Tr. Vol. I: 345-346) (Tr. Vol. III: 933-934, 1044, 1171-1172).
53. Student's father filed a complaint when the *** teacher attempted to confer with Student's *** and ***. Student's parents were upset when *** as a result of school district inquiries. (Tr. Vol. II: 611-612)(Tr. Vol. III: 957-958). Student's father continues to refuse parental consent for school personnel to confer with Student's medical providers. (Tr. Vol. II: 612).
54. The inability of school personnel to communicate with medical personnel, review medical documentation, confirm medical diagnoses, and receive guidance from Student's physician was a significant obstacle in meeting Student's educational needs. (Tr. Vol. III: 1184). However, no ARD ever requested a medical evaluation to confer with Student's physicians. (Tr. Vol. III: 1185).

*** ARD and Revised IEP

55. An annual review ARD convened on *** and devised a new IEP. (J. Ex. 6). This was the most recent IEP in place. (Tr. Vol. I: 170) (J. Ex. 6) (P. Ex. 24). The ARD continued to rely on the *** FIE. (Tr. Vol. I: 170-171) (J. Ex. 6:48). Direct speech services were provided for

*** minutes *** week for *** out of each *** week grading period. (Tr. Vol. II: 737)(J. Ex. 6: 48). The *** week of each *** week grading period was used to determine carryover of skills outside the therapy room. (Tr. Vol. II: 764, 766). Extended school year services were considered but not recommended. (J. Ex. 6:67). No BIP was included in the IEP. (J. Ex. 6: 49).

56. The duration of services was from *** to *** with the exception of speech services which were from *** to ***. (J. Ex. 6: 54-57). The IEP included goals and objectives to finish up the *** school year. (J. Ex. 6: 48, 51-52). The schedule of services went from *** to *** reflecting the due date for Student's annual ARD. (J. Ex. 6:63)
57. Some speech goals in the IEP were changed. (Tr. Vol. II: 746)(R. Ex. 13: 615). The use of percentages was added to more specifically identify progress in speech therapy progress reports. (Tr. Vol. II: 761-762). The speech/language pathologist was on campus daily. On some days she conducted assessments and/or supervised the speech therapy assistant (directly or indirectly). She also participated in ARD meetings, drafted IEP goals, and prepared written evaluations. (Tr. Vol. II: 767-771).
58. The ARD dismissed Student from receiving direct OT services on the recommendation of the OT therapist. (Tr. Vol. III: 871-872)(J. Ex. 6: 48) (P. Ex. 6:2). By the time OT therapy ended Student significantly reduced Student's *** to acceptable levels. (Tr. Vol. III: 862-863). However, in the *** Student regressed somewhat by continuing to engage in ***. (Tr. Vol. III: 925-929)(P. Ex. 7:7, 13, 20, 37-38, 40, 46, 58).
59. The *** IEP included objective and measureable goals and objectives addressing Student's speech, communication, adaptive behavior, ***, sensory, academic, and developmental needs and skills. (J. Ex. 6: 51-56, 63). A set of instructional accommodations and modifications were again implemented to facilitate learning, communication and behavior. (J. Ex. 6:57).

*** Classroom

60. Student moved *** to the *** classroom in the *** of the *** school year. (Tr. Vol. II: 745). The *** classroom was set up with ***. The *** program followed a structured, daily routine. (Tr. Vol. III: 1085, 1099)(R. Ex. 9:548). The primary focus in the *** classroom, as it was in the *** class, is on *** and ***. (Tr. Vol. II: 745-746). In *** Student was a typical *** in many ways: curious, loving, but a little headstrong at times. Student was *** students in the *** classroom. Student was in the *** classroom for approximately *** weeks from *** to ***. (Tr. Vol. III: 1084). Student enjoyed ***. (Tr. Vol. III: 1101-1102, 1109)(R. Ex. 9:553).
61. Students in the *** classroom had access to a variety of sensory materials. (Tr. Vol. III: 1103-1105). The *** teacher used *** with Student and a variety of *** devices and methods to facilitate *** for Student. (Tr. Vol. III: 1085-1086, 1088-1093, 1098-1099,

1100)(R. Ex. 9:534-535, 537, 539, 546, 549-550). Student's ability to *** progressed over the *** semester of ***. Student began using *** Student's needs and made progress with ***. (Tr. Vol. III: 1111-1112, 1128). *** were used to teach math skills. Student was beginning to learn ***. (Tr. Vol. III: 1106, 1113). Student did well with *** games. (Tr. Vol. III: 1103). Student behaved appropriately ***. (Tr. Vol. III: 1108)(R. Ex. 9: 568-572).

62. A few behavior reports were sent home during Student's time in the *** class. Overall Student's behavior was fine – Student had good days and bad days. Positive reinforcement strategies were used effectively in the *** class. (Tr. Vol. III: 1114). Student enjoyed ***. (Tr. Vol. III: 1115). The *** teacher conferred with the OT therapist about Student's sensory needs and Student's resistance to ***. (Tr. Vol. III: 1117-1118). Although Student initially *** Student progressed to ***. (Tr. Vol. III: 1118-1119).
63. The *** teacher sent home a daily report to parents. (Tr. Vol. III:1093-1094)(R. Ex. 9: 540). Daily work samples were also sent home. (Tr. Vol. III: 1097). Student's father met with the *** teacher and principal to discuss Student's progress and *** issues. (Tr. Vol. III: 1174).

PE

64. Student participated in PE class, followed directions and played ***, ***, and ***. (Tr. Vol. III: 1086). Student could catch, throw, and kick and participated in all PE activities just like the other children. (Tr. Vol. III: 1087). The PE teacher does not know Student's areas of disability or Student's medical history. (Tr. Vol. III: 827-828). The PE teacher never reviewed Student's IEP. (Tr. Vol. III: 835). The total number of students in PE fluctuates depending on the day of the week. There are *** students in PE on Mondays and *** on Tuesdays and so on. There are at least three adults in PE supervising the students and, at times, a special education teacher. (Tr. Vol. III: 826, 829). This past school year all students in the *** class attended PE with ***. All *** classes attended PE with ***. (Tr. Vol. III: 830, 834). Students sometimes ***. The ***. (Tr. Vol. III: 825, 832).

Observation

65. Student's father requested an opportunity to observe Student in the *** classroom for a full day to "figure out what's going on" in response to concerns about Student's behavior. (Tr. Vol. II: 531-532). Local policy precluded parents from observing in the classroom due, in part, to privacy issues. (Tr. Vol. II: 607)(Tr. Vol. III:1176)(P. Ex. 15:29). However, the principal proposed scheduling a series of observations for *** minutes each session with the principal in attendance. The principal had some concerns that Student's father might become angry during observations based on past episodes. By Student's own admission Student's father ***." There was a misunderstanding over the time frame proposed. (Tr. Vol. I: 185-186, 370-371) (Tr. Vol. II: 531-532, 607-609) (Tr. Vol. III: 1177-1178). Student's father rejected the principal's proposal. (Tr. Vol. I: 186) (Tr. Vol. II: 531-532, 608) (Tr. Vol. III: 1178).

Safety Concerns and Educational Records

66. Student experienced some *** at school. Student *** that required medical attention. (P. Ex. 13: 7, 12) (Tr. Vol. II: 539). A school district aide responded to Student's *** behavior by ***. Student *** the aide because Student was ***. (Tr. Vol. II: 588-589)(P. Ex. 15:6).
67. ***. (Tr. Vol. II:539, 585-586)(Tr. Vol. III:1120)(P. Ex. 7:96). Student's parents were especially concerned over this incident because of Student's ***. (Tr. Vol. II:586)(P. Ex. 13:1). Student's father felt he needed information from the school district *** incident so he could share it with Student's physician and determine the need for possible medical treatment. (Tr. Vol. II: 586-587).
68. In *** Student's ***. (Tr. Vol. II: 521-522)(P. Ex. 26:161135). This report greatly distressed Student's parents and they requested information and an investigation from the school district. (Tr. Vol. II.: 522-523). They also ***. (R. Ex. 12:1). The school district *** but could not *** occurred and ***. (Tr. Vol. II: 795-800, 805, 810)(R. Ex. 12: 610, 614). The *** referred the matter to ***. (Tr. Vol. II: 808, 813).
69. Student's father met with the Superintendent to discuss the alleged *** and his other concerns over Student's physical well-being at school. He did not feel the Superintendent was sympathetic to his concerns or understood that becoming physically aggressive with Student was not an effective behavioral or disciplinary technique. (Tr. Vol. II: 587-588). Around this time Student's father requested copies of Student's educational records and any investigative materials related to Student's safety at school. He did not receive many documents from the school in response. (Tr. Vol. II: 371, 592-593).

Withdrawal from Public School

70. Student's parents concluded attending public school was no longer safe for Student and Student was withdrawn on ***. Student's parents intended to *** Student. (Tr. Vol. I: 209-210, 369-370) (Tr. Vol. II: 613) (P. Ex. 9:4) (P. Ex. 15:28) (R. Ex. 8:403, 406). Since then Student's parents have cobbled together a set of private services including OT and speech from *** – a private provider. (Tr. Vol. II:402, 514, 614)(P. 15:30).
71. On the day of withdrawal Student's father shared concerns over *** issues with the principal. The principal referred Student's father to *** – ***. (Tr. Vol. III: 1178-1179).
72. Following Student's withdrawal in *** the campus principal reached out to the family with a letter on *** to encourage Student to return to school. (Tr. Vol. I: 373) (P. Ex. 15:40). ***. (R. Ex. 11:605-607). The school district invited Student's parents to an ARD meeting to discuss a proposed updated evaluation and explain the evaluation process. (Tr. Vol. I: 37-4-375)(Tr. Vol. III: 1179)(P. Ex. 28:1)(P. Ex. 30:14). School staff appeared for the ARD as scheduled. Student's parents could not attend so the meeting did not proceed. The school

district offered to reschedule the ARD but by then this litigation was pending. (Tr. Vol. I: 375-376, 378-381) (Tr. Vol. II: 785) (Tr. Vol. III: 1123) (R. Ex. 11: 607).

ABA Therapy

73. Applied Behavior Analysis (ABA) therapy is a comprehensive approach to decreasing interfering behaviors and improving skills. (Tr. Vol. II: 464-465). The use of discrete trial training is a strategy used in ABA therapy and a form of positive reinforcement used in shaping behavior. (Tr. Vol. I: 299-300). ABA is supported by peer-reviewed, scientifically based studies showing its effectiveness as a methodology with students with autism. (Tr. Vol. I: 257-258).
74. After withdrawing Student from school Student's father discovered ***. *** is a private ABA therapy day placement *** from the school district. (Tr. Vol. I: 237-239)(Tr. Vol. II: 516-517)(Tr. Vol. III: 1178)(P. Ex. 15: 32-37) (P. Ex. 18). It provides ABA services from early intervention to adults. (Tr. Vol. I: 237). The program is data driven and individualized. (Tr. Vol. I: 254-255). The program includes an initial assessment to collect baseline data. (Tr. Vol. I: 245, 258, 260). A treatment plan is then developed on the basis of the assessment. (Tr. Vol. I: 261, 283).
75. *** is not a school, does not utilize a TEA approved curriculum, and has no certified teachers on staff. (Tr. Vol. I: 278, 279, 281-282, 286). *** does not offer related services. (Tr. Vol. I: 261, 286). All the students who attend the day therapy program are students with autism. There are no typically developing peers. (Tr. Vol. I: 281-282, 286). *** can provide ABA services to Student. ABA therapy is delivered under the supervision of a trained clinician. (Tr. Vol. I: 240). ***, ***, can also provide ABA therapy. (Tr. Vol. III: 119-1191).

Parent Communication and Support

76. Student's *** teacher offered parent training opportunities a few times each year. Information about community resources and other information and opportunities to meet other parents were available at these meetings. Student's parents were invited but never attended. (Tr. Vol. III: 1042). In the *** class Student's parents did not *** or ***. (Tr. Vol. III: 1134).
77. Student's father ***. ***. (Tr. Vol. II: 540, 583, 598, 600, 606, 615). *** during Student's enrollment in the school district. (Tr. Vol. I: 363-364) (Tr. Vol. II: 612-613) (Tr. Vol. III: 363-364, 1045-1047). ***. (Tr. Vol. II: 603)(Tr. Vol. III: 1181-1182).
78. In-home and parent training is for the family to ensure carryover of skills learned at school to home. It is available for any student with a need – not just students with autism. (Tr. Vol. I: 362-363). Student's parents consistently represented to school personnel they had no issues at home with Student. (Tr. Vol. I: 363-364). Therefore the school district never

offered in-home or parent training assessments or services. (Tr. Vol. I: 365) (Tr. Vol. III: 1191-1192).

Student's Progress in School

79. Student exhibited serious communication deficits when Student first enrolled in the school district and was essentially ***. (Tr. Vol. I: 96) (Tr. Vol. III: 1019-1020). As time went on Student began to ***. (Tr. Vol. II: 740)(Tr. Vol. III: 1019-1020). Student used *** assistive technology such as ***. In the *** class Student began learning a bit of ***. (Tr. Vol. III: 1087-1091, 1111, 1114)(R. Ex. 9: 539-545).
80. Student began to *** and use some ***. (Tr. Vol. II: 728, 753)(Tr. Vol. III: 972, 992-993, 1126). Student could ***. *** is a first step towards ***. Student made progress on this goal. (Tr. Vol. II: 742-743, 753-754)(R. Ex. 1:2). Student used a variety of *** to *** and made slow progress. (Tr. Vol. II: 740)(Tr. Vol. III: 1025).
81. Student made progress *** with and without prompts. (Tr. Vol. II: 727-728, 739-743)(Tr. Vol. III: 1023)(J. Ex. 6:54). Student showed improvement in receptive language skills. Student did well ***. (Tr. Vol. II: 743, 745). Student mastered following two-step directions. (Tr. Vol. II: 747). Student's sorting skills improved. (Tr. Vol. III: 1024-1025). Expressive language is often slower to develop in children with intellectual disabilities because it takes a certain amount of cognitive ability to formulate what to say and then use the motor planning required to express it. (Tr. Vol. II: 748).
82. Student initially had issues attending but Student's ability to attend improved over time. (Tr. Vol. II: 749)(Tr. Vol. III: 1184). In *** Student was not able to attend a therapy session for *** minutes. By *** Student's ability to attend improved but Student could not tolerate more than *** therapy session per ***. (Tr. Vol. II: 749-750).
83. Initially Student did not use a ***. Both classrooms used a **** curriculum. Initially Student could not execute *** but instead ***. (J. Ex. 9: 104) (Tr. Vol. III: 865-866). Student progressed with basic *** skills and learned to use ***. (Tr. Vol. III: 857,859). Student worked on *** daily and Student's *** skills improved. (Tr. Vol. III: 866, 1026).
84. Student met a sequencing objective in the OT IEP. (Tr. Vol. III: 860). Initially Student needed to learn to tolerate the sensory experience without a negative response. (Tr. Vol. III: 868-869). When OT first began Student could not complete ***. Student made steady progress and worked up to completing ***. (Tr. Vol. III: 869)(R. Ex. 1:11).
85. Student was able to ***. (Tr. Vol. I: 356) (Tr. Vol. III: 857, 859, 864-866, 869, 983, 1026). During the *** school year Student began to independently ***. (Tr. Vol. III: 1105, 1110) (J. Ex. 6:56) (R. Ex. 9:578). As a result Student was better able to participate in the academic program of the classroom. (Tr. Vol. III: 871).

86. Student made progress on Student's math and reading goals. (Tr. Vol. III: 1096, 1106) (J. Ex. 6:55-56) (R. Ex. 9:538). As a student with an intellectual disability Student needed repetition and Student's progress, although slow, was progress nevertheless. The carryover in IEP goals and objectives reflect Student's need for repetition. (Tr. Vol. I: 178-179).
87. Student also made progress on behavioral goals, progressing from "**** ****" and attempting to leave the classroom **** to ceasing that behavior. (J. Ex. 3:7, 11) (Tr. Vol. I: 92) (Tr. Vol. III: 1030). Student significantly reduced **** behavior and reduced ****. (Tr. Vol. I: 92, 145) (Tr. III: 1029-1031, 852). Student played appropriately with classmates. (Tr. Vol. III: 1012, 1014)(R. Ex. 9:518)
88. In the **** class Student **** for the first **** weeks but progressed to ****. (J. Ex. 6: 53)(Tr. Vol. I: 336-337)(Tr. Vol. III: 922, 932, 1135-1136). Student's father also worked on **** at home. Student was **** two weeks after Student's withdrawal from school. (Vol. II: 622-623).
89. Student made progress from ****. (J. Ex. 3:7) (Tr. Vol. III: 1001-1002, 1027, 1119, 1027). Student participated in regular PE class with non-disabled students and went on field trips and to lunch and recess with non-disabled peers. (Tr. Vol. I: 358) (Tr. Vol. III: 823, 1009, 1012, 1014, 1115) (R. Ex. 9:517).
90. Student interacted appropriately with the other students in PE, fit in well, and was able to participate and follow the PE activities. Student took turns and seemed to thoroughly enjoy playing with the other children. (Tr. Vol. III: 822-823, 999-1000). Student played **** and **** with non-disabled peers in PE and at recess. (Tr. Vol. III: 823-824, 1009, 1115)(R. Ex. 9:517).

Progress Reports

91. Student's IEPs stated that most progress reports on IEP goals were to be issued to Student's parents at the same frequency as those issued to parents of non-disabled students – with report cards every **** weeks. (Tr. Vol. I: 161, 353) (Tr. Vol. III: 898-899, 1162) (J. Ex. 6: 55-56) (P. Ex. 24: 34-35). However, the IEPs also stated that speech therapy progress reports were to be issued on a semester basis (per SSA policies) unless requested more frequently by parents. (Tr. Vol. I: 162) (Tr. Vol. II: 783-784)(J. Ex. 54, 67). (P. Ex. 24:34).

Notice of Procedural Safeguards

92. A Notice of Procedural Safeguards was provided at the time Student's mother consented to the initial FIE. (Tr. Vol. III: 961)(J. 9:122). It was standard practice to review Notice of Procedural Safeguards at each ARD meeting. (Tr. Vol. I: 212). Student's mother attended all but one of Student's ARD meetings – both in person and twice by telephone. (Tr. Vol. III: 953-954). Notice of Procedural Safeguards was first provided to Student's mother at the **** temporary ARD. (Tr. Vol. III: 1044)(J. Ex. 1:2).

93. Notice of Procedural Safeguards was provided to Student's parents with the ARD Invitations to all subsequent ARD meetings on: ***, ***, ***, ***, and ***. (Tr. Vol. III: 1044)(J. Ex. 3:34) (J. Ex. 5: 46) (J. Ex. 6:80-81) (P. Ex. 23: 1-2) (R. Ex. 1: 31) (R. Ex. 7:83). Notice of ARD meetings were sent home in Student's backpack. (Tr. Vol. III: 963).

DISCUSSION

Statute of Limitations Issue

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 a free, appropriate public education (FAPE) to the child within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. *20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2).*

The two year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. In that case the state timelines apply. *20 U.S.C. §1415 (f) (3) (C); 34 C.F.R. § 300.507 (a) (2).* Texas has an explicit statute of limitations rule. In Texas a parent must file a request for a due process hearing within one year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request. *19 Tex. Admin. Code § 89.1151 (c).* Petitioner filed the request for a due process hearing on January 7, 2016. Petitioner alleged claims arising as far back as *** through the filing of the Complaint.

Exceptions to the One Year Statute of Limitations Rule

The one year statute of limitations rule will not apply in Texas if the parent was prevented from requesting a due process hearing due to either:

- Specific misrepresentations by the school district that it had resolved the problem that forms the basis of the due process hearing request; or
- The school district withheld information from the parent that it was required to provide under IDEA. *20 U.S.C. § 1415 (f) (3) (D); 34 C.F.R. § 300.511 (f) (1) (2)*

Accrual of Petitioner's Claims

Petitioner's cause of action under the IDEA accrued when Student's parents knew or had reason to know of the injury that forms the basis of the due process Complaint. *See, Doe v. Westerville City Sch. Dist., 50 IDELR, 132, pp 5-6 (D.C. Ohio 2008) (holding cause of action for failure to provide FAPE when student first diagnosed with a learning disability).* In making the determination as to whether the exceptions should apply in this case, I must calculate the limitations period from the date Student's parents knew or should have known of the complained of actions of the school district and *not* one year from the date Student's parents learned from Student's attorney that school

district actions were wrong. *Bell v. Bd. of Educ. Albuquerque Pub. Sch.*, 50 IDELER 285, pp 8-9, 15-15 (D.C. N.M. 2008)(holding IDEA claims that student was misidentified as MR rather than LD and thus denied FAPE were limited to two year SOL period).

Misrepresentation Exception

Neither the IDEA nor its related regulations clarify the scope of what constitutes a “misrepresentation” under the first exception. The United States Department of Education left it to hearing officers to decide on a case by case basis the factors that establish whether a parent knew or should have known about the action that is the basis of the hearing request. 71 Fed. Reg. 46540, 46706 (Aug. 14, 2006). Case law provides some guidance in making that determination.

The alleged misrepresentation must be intentional or flagrant. Petitioner must establish not that the school district’s educational program was objectively inappropriate but instead that the school district subjectively determined Student was not receiving a free, appropriate public education and intentionally and knowingly misrepresented that fact to Student’s parents. *D.K. v. Abington Sch. Dist.*, 2012 U.S. App. LEXIS 21060 (3d Cir. 2012)(student could not show misrepresentations caused failure to request a hearing or file a complaint on time – teachers did not intentionally or knowingly mislead parents about extent of academic and behavioral issues or efficacy of solutions and programs attempted). See, also, *Evan H. v. Unionville-Chadds Ford Sch. Dist.*, 2008 U.S. Dist. LEXIS 91442, pp. 4-5 (D.C. Pa. 2008).

Furthermore not any misrepresentation triggers the exception. Instead the misrepresentation must be such that it prevents the parent from requesting a due process hearing regarding claims that would otherwise be time-barred. *C.H. v. Northwest Ind. Sch. Dist.*, 815 F. Supp 2d 977, 984 (E.D. Tex. 2011); *G.I. v. Lewisville Ind. Sch. Dist.*, 2013 U.S. Dist. LEXIS 120156 (E.D. Tex. 2013)(Magistrate’s Report and Recommendation). Petitioner contends the school district consistently misrepresented Student’s educational progress and Student’s eligibility for special education as a student with autism. However, “misrepresentation” does not include actions by a school district anytime it fails to remedy an educational concern raised by a parent. See, *Evan H. v. Unionville-Chadds Ford Sch. Dist.* 2008 U.S. Dist. LEXIS 91442 at p. 5, n. 3.

This issue was considered in a Pennsylvania case where the parent alleged the school district repeatedly misrepresented that the student was doing well and making significant progress in all areas including reading. The parents alleged the school district misled them by withholding information about the student’s standardized test scores. *Sch. Dist. of Philadelphia v. Deborah A.*, 2009 U.S. Dist. LEXIS 24505, pp. 3-4 (D.C. Pa. 2009).

The federal court found that at most the parent merely demonstrated the student’s IEPs were deficient. The court reasoned the exception would swallow the rule if all that was required was merely a showing that IEP’s were inadequate to meet a student’s needs. In hindsight, parents may consider the school district’s assessment of a student’s progress to be wrong, but that does not rise to a specific misrepresentation for statute of limitation purposes. *Id.*

Notice of Procedural Rights

The evidence showed Student's parents received Notice of Procedural Safeguards with every Notice of ARD meeting, at the initial ARD in ***, and with Notice of the *** FIE. It is reasonable to infer from the evidence that Student's parents did or should have known of their procedural rights as a result of the Notices provided to them over the course of the two and half years Student attended school.

When a school district delivers a copy of IDEA procedural safeguards to a parent the statute of limitations period for IDEA violations begins regardless of whether the parent later examines the text to acquire actual knowledge of procedural rights – the simple act of delivering the procedural safeguards notice suffices to impute constructive knowledge of parental rights under IDEA. *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (D.C. Tex. 2008), *aff'd in part and vacated on o.g.* 591 F. 3d 417 (5th Cir. 2009); *C.P. v. Krum Ind. Sch. Dist.*, 2014 U.S. Dist. LEXIS 131098 (E.D. Tex. 2014)(*one year SOL applied to limit IDEA claims where school district gave parents copies of procedural safeguards on numerous occasions*).

Conclusion on Statute of Limitations Issue

I conclude that the record on file in this case does not support a finding that the school district's actions rose to the level of flagrant, intentional misrepresentation required by the first exception to the statute of limitations rule. In order to apply this exception Petitioner had to establish that the school district knew that it was not providing Student with an appropriate education based on inaccurate evaluations and intentionally misled Student's parents into believing otherwise. I find insufficient support for such a conclusion in the record. *D.K. v. Abington Sch. Dist.*, *supra*; *See, Evan H. v. Unionville Chadds Ford Sch. Dist.*, 2008 U.S. Dist. LEXIS 91441 at p. 5 (D.C. Pa. 2008).

In addition, the evidence supports the reasonable inference that Student's parents had either actual or constructive knowledge of their procedural rights, including the right to file a due process Complaint. *El Paso Ind. Sch. Dist. v. Richard R.*, *supra*. Therefore, the one year statute of limitations rule applies to Petitioner's claims in this case.

School District's Evaluation

One of Petitioner's items of requested relief is for independent educational evaluations (IEEs) in all areas of suspected disability and need. In response the school district filed a counterclaim on March 28, 2016 to defend its FIE and challenging the parent's right to an IEE at school district expense. Following testimony by Petitioner's expert the school district withdrew its counterclaim on the final day of the due process hearing. The school district's counterclaim was dismissed on the record. (Tr. Vol. III: 1164). The preponderance of the evidence showed one of the instruments used in the autism evaluation in the *** FIE contained a significant scoring error that would have identified Student in as a student with autism.

Autism Supplement

In Texas, for students with autism, the ARD committee must consider (and when needed address in the student's IEP) the following:

- extended educational programming (such as extended day or extended school year services);
- daily schedules reflecting minimal unstructured time and active engagement in learning activities;
- in-home and community-based training to assist Student in acquiring social/behavioral skills;
- positive behavior support strategies;
- futures planning;
- parent/family training and support;
- suitable staff to student ratios;
- communication interventions;
- social skills supports and strategies; and,
- professional and staff support and teaching strategies based on peer-reviewed, research-based practices as discrete trial training, ABA, visual supports, etc.

19 Tex. Admin. Code § 89.1055 (e) (1)-(11). This list of items is commonly referred to as the "Autism Supplement."

FAPE Does not Depend on Label

However, the preponderance of the evidence shows that although the ARD Committee may not have specifically referred to the Autism Supplement it considered and addressed in Student's IEP most of the items in the Supplement including: daily schedules with unstructured time, active engagement in learning activities; positive behavior support strategies; suitable staff to student ratio; communication interventions; and, social skills supports and strategies. A number of the teaching strategies listed in the Autism Supplement were used by school staff in implementing Student's IEP.

Student was ***. Finally, Student's parents consistently took the position with school staff they did not require in-home or parent training. The only possible oversight was the failure to adequately consider Student's need for extended school year services. There was not much evidence on this aspect of Student's IEPs one way or the other.

Although it appears Student may meet eligibility criteria as a student with autism the determination of whether a Student has been provided with FAPE does not necessarily hinge on the student's eligibility classification. *20 U.S. C. § 1412 (a) (3) (8); Heather S. v. Wisconsin, 125 F. 3d 1045, 1055 (7th Cir. 1997) (IDEA requires development of an appropriate education not coming up with a proper label to describe the student's multiple disabilities). See also, Fort Osage R-1 Sch. Dist. v. Sims, 641 F. 3d 996, 1004 (8th Cir. 2011) (IEP not invalid simply because it did not include a particular diagnosis when IEP must be tailored to child's specific needs).* The purpose of categorizing a student with a disability is to attempt to meet the student's needs but categorization is not an end to itself. *Pohorecki v. Anthony Wayne Local Sch. Dist., 637 F. Supp 2d 547, 557-558 (N.*

D. Ohio 2009) (child classified as ED and parents sought classifications of OHI and Autism).

Did the School District Student with FAPE Within the Relevant Time Period?

A free, appropriate public education is special education, related services and specially designed personalized instruction with sufficient support services to meet the unique needs of the child in order to receive a meaningful educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982); 20 U.S.C. § 1401(9); 34 C.F.R. § 300.26. While the IDEA guarantees only a "basic floor of opportunity" the IEP must nevertheless be specifically designed to meet Student's unique needs supported by services that permit Student to benefit from the instruction. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. at 188-189.

However, the IEP need not be the best possible one nor must it be designed to maximize Student's potential. Instead, the school district must provide Student with a meaningful educational benefit – one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. VP*, 582 F. 3d 576, 583 (5th Cir. 2009) cert. denied, 559 U.S. 1007(2010). The basic inquiry in this case is whether the IEP implemented by the school district was reasonably calculated to provide Student the requisite meaningful educational benefit. *Rowley*, 458 U.S. at 206-207.

Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. ³ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). Therefore, the burden of proof in this case is on Petitioner. *Id.*

The Four Factors Analysis

In this jurisdiction there are four factors applied in order to determine whether the IEP as implemented was reasonably calculated to provide Student with the requisite meaningful educational benefit under the IDEA. These factors are:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated and collaborative manner by key stakeholders; and,
- There are positive academic and non-academic benefits demonstrated.

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

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997). There is no requirement the four factors be considered or weighed in any particular way. Instead the factors are merely indicators of when an IEP meets IDEA requirements. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d, 286, 293 (5th Cir. 2009).

Furthermore, in this jurisdiction, the provision of FAPE must be judged by the overall educational benefits received and not solely by remediation of the student's disability. *Klein Independent School District v. Per Hovem*, 690 F. 3d 390, 391 (5th Cir. 2012)(high school student's IEPs enabled student to excel with accommodations for his severe learning disabilities in a mainstream high school curriculum – therefore school district provided student with FAPE).

The requisite educational benefit is not defined exclusively or even primarily in terms of correcting a student's disability. Remediation may be a component of a student's IEP, including for example, behavioral modifications. IEP strategies may remediate a disability while also necessary to confer educational benefits. However, it is the whole educational experience, and its adaptation to confer benefits that is the ultimate goal of the IDEA. *Klein Ind. Sch. Dist. v. Per Hovem*, 690 F. 3d at 397, 398. I must therefore determine whether the IEPs at issue conferred Student with the requisite educational benefit from this holistic perspective. *Id.*

Individualized on the Basis of Assessment and Performance

The preponderance of the evidence shows Student's educational program during the relevant time period was individualized on the basis of assessment and performance. There were some deficits in the *** FIE the ARD relied on in designing the relevant IEPs. However, the FIE also included good information based on a wide variety of both formal and informal instruments. The evidence showed that Student's IEP goals and objectives, the related services, and the set of accommodations and modifications were individualized to meet Student's somewhat complex and challenging needs as a student with developmental delays and significant communication deficits.

As Student progressed Student was able to tolerate pull-out speech therapy services so the IEP was revised to provide that service. The use of total communication in both classrooms with an emphasis on the use of *** met Student's individualized communication needs based on assessment and performance. The *** teacher began to introduce some *** to encourage and support *** for Student.

Although the IEPs lacked a specific behavior plan and Student continued to exhibit some behavioral issues the evidence showed that the use of positive reinforcement and keeping Student engaged in instructional activity were effective in meeting Student's behavioral needs. The OT plan focused on Student's *** needs in developing *** activities, and moving from ***. When Student was able to *** instruction moved on to ***.

Least Restrictive Environment

The preponderance of the evidence clearly establishes that the combination of instruction in the special education classes with opportunities for mainstreaming during PE, lunch, and recess provided Student with the least restrictive environment for implementation of Student's educational plan. The evidence showed Student was highly successful interacting with non-disabled peers and responded well to those opportunities. The small teacher to student ratio in the special education *** and *** classes was appropriate along with the opportunity to interact with non-disabled peers to the maximum extent appropriate. 34 C.F.R. § 300.114. Given Student's success in PE especially and Student's ability to manage behavior on school field trips a more restrictive setting, without the opportunity to interact with non-disabled peers, would not be appropriate for Student.

Services Provide in Coordinated and Collaborative Manner by Key Stakeholders

The preponderance of the evidence demonstrates there was a high degree of coordination and collaboration between the teaching staff and related service personnel. Classroom teachers communicated regularly with the OT and speech/language pathologist. In-depth consultative services to teachers supported Student's progress towards IEP goals and objectives and function in the classroom. Both OT and speech services were adjusted over time to address Student's needs as Student began to show greater tolerance for pull-out therapies and progress in meeting goals and objectives. The constantly evolving development and implementation of the *** by the OT and classroom teachers is another example of collaboration between key stakeholders. The LSSP also provided behavioral support to teaching staff.

The evidence showed teachers attempted to coordinate and collaborate with Student's parents with varying degrees of success. Both the *** and *** teacher communicated frequently with Student's parents in a variety of ways including phone calls, face to face meetings, sending work home, and with daily notes. The school district attempted to support the family *** and lending a sympathetic ear. The *** teacher and principal met with Student's father in response to shared concerns over some behavioral issues in the classroom. In addition, Student's father met with the Superintendent over safety concerns.

However, parental resistance and ultimately refusal to allow school personnel to confer directly with Student's health care providers interfered with the school district's ability to address Student's significant *** issues. Without guidance from Student's medical providers and a firm medical diagnosis as to whether Student *** teachers and therapists were stymied in their efforts to broaden Student's ***. The evidence shows the school district followed parental instructions to maintain *** at school and ceased efforts to teach Student to *** – an appropriate *** skill Student needs.

Direct collaboration with medical providers would have been helpful in extinguishing Student's behavior *****. Although the sensory replacement items were helpful in significantly reducing *** there was some evidence Student regressed slightly when Student returned to school ***. The ability to confer with medical providers to address this issue could have been helpful to teaching and related service personnel.

The school district cooperated with parental requests to *** even though Student was demonstrating the ability *** appropriately at school. While Student's parents never provided medical records to confirm Student's *** or absence from school for ***. However, the school district never questioned or challenged parental representations with regard to Student's medical needs.

Positive Academic and Non-Academic Benefits

Examination of the record in this case supports the conclusion that Student derived positive academic and non-academic benefits from Student's educational program. Student arrived at the school district in *** completely *** with few ***. Student made progress in both receptive and expressive language skills – Student was able to understand teacher directives and began to ***. Student learned to ***. In *** Student was beginning to learn ***.

Negative behaviors such as *** were significantly reduced. Student learned to use Student's *** appropriately ***. Student's ability to accept therapeutic experiences increased. The evidence showed Student made progress on *** skills and responded well to the *** and *** of both the *** and *** classrooms.

Clearly Student demonstrated non-academic benefits as well. Student enjoyed and behaved appropriately in PE and recess. Even though the PE teacher did not really know what Student's disabilities were and did not review Student's IEP those omissions did not impact Student's success in the PE class. Student derived emotional benefit from the support of *** in the *** classroom and did well on ***. The social interaction and opportunities for communication available in Student's educational experiences met Student's needs as a student with developmental disabilities. Student made significant progress in *** at school.

Conclusion on FAPE Issue

I must utilize a holistic perspective in evaluating Student's educational program when I apply the four facts test to the record on file in this case. Although there were some deficits in Student's program the preponderance of the evidence leads me to conclude that Student received the requisite meaningful educational benefit from Student's program and placement during the relevant time period. Student did not meet Student's burden of proving the school district failed to provide Student with FAPE; indeed the evidence, looking at the program as a whole, proves otherwise. *Klein Independent School District v. Per Hovem*, 690 F. 3d 390, 391 (5th Cir. 2012); *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d, 286, 293 (5th Cir. 2009); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997). Finally, there was no evidence that Student was denied access to Student's education as a result of bullying or harassment. See, *T.K. v. New York City Dept. of Educ.*, 779 F. Supp. 2d 289, 316 (S.D. N.Y. 2011, *aff'd* T.K. v. New York City Dept. of Educ., 2016 U.S. App. LEXIS 888 (2d Cir. 2016).

Private Placement

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

In this case I have concluded the school district's program and placement in the *** and *** classes were appropriate and provided Student with FAPE in the least restrictive environment. Student made meaningful educational progress and was educated with non-disabled peers to the maximum extent appropriate. 34 C.F.R. §300.114. Therefore, there is no need to consider whether Student met the second prong of the private placement test. Even if I did do so the segregated nature of the *** program would not provide Student with an appropriate program in the least restrictive environment because its student body is limited to students with autism and lacks an appropriate educational curriculum --. *Burlington, supra*; 34 C.F.R. § 300.114 (a) (2).

Procedural Violations

Petitioner contends the school district failed to give Student's parents notice of procedural safeguards, failed to timely and appropriately respond to requests for records, and prevented Student's father from observing Student at school. Petitioner also contends the school district failed to provide timely progress reports. Petitioner contends these procedural violations significantly impeded parental opportunity to participate in the decision-making process regarding the provision of a free, appropriate public education to Student. *See*, 34 C.F.R. § 300.513 (a)(2)(ii).

Petitioner failed to meet Petitioner's burden of proof on this issue. The major thrust of Petitioner's complaints about failure to provide educational records are simply complaints about the school district's alleged failure to serve sufficient discovery responses. Those issues should have been submitted to the hearing officer within the time frame for discovery established by the scheduling order in place.

There is some evidence that Student's father requested information and records in late 2015. However, this litigation ensued shortly thereafter. Under these circumstances I cannot conclude that any failure to respond to verbal requests for records significantly impeded the parental opportunity to participate in educational decision-making. There was credible evidence that a number of documents related to Student's performance and educational data were unfortunately lost *** classroom – so there were a number of documents that could not be provided to either the parents or Student's attorney.

The preponderance of the credible evidence showed, as discussed *infra*, that the school district provided Student's parents with the requisite Notice of Procedural Rights and attempted to arrange for Student's father to observe the classroom under reasonable conditions. There is no parental right to observations of a child's classroom. State and local policy control who has access to the classroom. *Letter to Mamas*, 42 IDELR 10 (OSEP 2004); *See also*, *Student v. West Costa Unified*

Sch. Dist., 66 IDELR 36 (N.D. Cal. 2015)(no requirement under IDEA parent may observe school district's assessment; parent's demand to observe via one-way mirror unreasonable and imposed improper conditions on assessment). It is unfortunate there was apparently a misunderstanding as to the amount of time proposed by the campus principal but this misunderstanding does not rise to the level of a procedural violation under the IDEA. *34 C.F.R. § 300.513.*

Finally, the evidence showed that progress reports were issued in compliance with the IDEA. The regulations require a student's IEP include a description of when periodic IEP progress reports will be issued. The IDEA does not require a specific time period. The regulation refers, as an example, that IEP progress reports can be issued concurrent with report cards. However, that is not a requirement. So long as the description is stated in the IEP and the school district follows the description there is no procedural violation. *34 C.F.R. § 330.320 (a) (3).* In this case the IEPs at issue included the requisite descriptions – most progress reports were issued concurrent with report cards except for speech reports which were issued each semester – as stated in the IEPs. It is reasonable to infer that some progress reports were not issued during Student's absences from school. Petitioner did not meet Petitioner's burden of proof on this issue.

Recommendations

Although I find the school district provided Student with the requisite meaningful educational benefit I include the following recommendations *by way of guidance only* to the parties going forward. Student's three year re-evaluation is due by ***. The school district now has notice of the scoring error in its *** FIE and of Dr. ***'s evaluation report. This information should be considered in conducting any re-evaluation and whether an updated autism evaluation, including a FBA, should be conducted. Consideration of the implementation of ABA strategies and perhaps ABA therapy should be discussed at any subsequent ARD in meeting Student's behavioral needs.

The evidence shows Student needs a *** protocol and medical evaluations to determine whether Student *** as a *** and whether Student's *** and *** deficits are the result of learned behavior or sensory-based or both. Confirmation of *** and any implications for safety at school by a physician would be helpful to the school district. While these determinations are primarily medical in nature and go towards remediation of some of Student's disabilities – which in this jurisdiction is not the purview of the public school – the school district nevertheless has a role to play in implementing any *** program and/or safety plan recommended by Student's medical providers.

If Student returns to the school district the ARD should consider medical evaluations for diagnostic purposes on these issues. To do so, however, will also require parental consent. Student's parents need to reflect upon their refusal to grant the necessary consent up to this point if they expect the school district to address Student's medical needs at school.

Conclusions of Law

1. Petitioner did not meet Petitioner's burden of proving the exceptions to the one year statute of limitations rule as applied in Texas. *34 C.F.R. §§ 300.507 (a)(2), 300.511 (f).*

2. Petitioner did not meet Petitioner's burden of proving the educational program and placements implemented by Respondent during the relevant time period failed to provide Petitioner with a free, appropriate public education. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997); *Klein Independent School District v. Per Hovem*, 690 F. 3d 390, 391 (5th Cir. 2012)
3. Petitioner did not meet Petitioner's burden of proving Respondent failed to comply with student or parental procedural rights under the IDEA. *Schaffer v. Weast*, 546 U.S. 49 (2005); 34 C.F.R. § . §330.320 (a)(3); 300.503.
4. The hearing officer lacks jurisdiction to make an award of attorney's fees as litigation costs. 34 C.F.R. § 300.517.

ORDERS

Based upon the foregoing findings of fact and conclusions of law it is hereby **ORDERED** that Petitioner's requests for relief are hereby **DENIED**. All other relief not specifically stated herein is **DENIED**.

SIGNED the 24th day of June 2016

/s/ Ann Vevier Lockwood
Ann Vevier Lockwood
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 34 C.F.R. § 300.516; 19 Tex. Admin. Code Sec. 89.1185 (n).