

DOCKET NO. 195-SE-0417

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

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Petitioner, STUDENT, b/n/f PARENT (“Petitioner” or “Student”) brings this action against the Port Arthur Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the school district’s proposed placement for Student into a Life Skills class on *** under a proposed *** is appropriate and the least restrictive environment for Student or whether Student needs continued placement at the *** (***) a *** center with a ***.

The hearing officer concludes the proposed placement into a Life Skills class on *** is appropriate but the school district’s *** lacks sufficient parent training, criteria for Student’s readiness, and sufficient collaboration between key stakeholders. The hearing officer further concludes Student’s continued placement at *** is essential and primarily oriented toward enabling Student to obtain an education until an appropriate *** is designed and fully implemented.

A. Continuances and Extension of Decision Due Date

There were no continuances in this case – instead a third day for hearing was added at Petitioner’s request. The hearing was scheduled for June 14-16, 2017, with the decision due July 9, 2017. The decision due date was extended for good cause to August 14, 2017 at the conclusion of the due process hearing by joint request of the parties. The decision was extended again to August 16, 2017, at Petitioner’s request to allow the parties more time to submit written closing arguments.

B. Legal Representatives

Student was represented throughout this litigation by Student’s legal counsel Dorene Philpot with the Philpot Law Office and her co-counsel Sharon Ramage and Jacqueline Dodd with the Ramage Law Group. The school district was represented throughout this litigation by its legal counsel Cynthia Buechler with the law firm of Buechler & Associates.

C. Resolution Session and Mediation

The parties agreed to attempt mediation in lieu of a Resolution Session. The parties met in mediation on May 31, 2017, but it was not successful.

D. Preliminary Motions

There were several preliminary motions resolved prior to the due process hearing. Order No. 3 issued on May 10, 2017, denied Respondent’s Sufficiency Challenge to the Complaint. Order No. 4 issued on May 23, 2017, granted Petitioner’s Request for Parental Observation. Order No. 7 issued on June 5, 2017, resolved competing discovery issues related to document requests. Order No. 8 on Student’s Status Pending Due Process Hearing issued on June 5, 2017, confirmed Student’s placement at *** pending the outcome of the due process hearing.

II. DUE PROCESS HEARING

The due process hearing was conducted on June 14-16, 2017. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel Dorene Philpot assisted by her co-counsel Jacqueline Dodd. In addition, Student's *** also attended the due process hearing periodically throughout the three days of hearing. *** throughout the due process hearing.

Respondent continued to be represented by its legal counsel Cynthia Buechler. In addition ***, the Director of Special Education for the school district, attended the hearing as the party representative. Dr. ***, Superintendent, and Dr. ***, Assistant Superintendent, also attended the due process periodically throughout the three days of hearing. ***, Computer Technician for the school district, attended a portion of the due process hearing to facilitate the use of technology in securing the testimony of witnesses from ***. Both parties filed written closing arguments in a timely manner. The Decision in this case is due August 16, 2017.

III. ISSUES

A. Petitioner's Issues

Petitioner confirmed the following IDEA issues for decision in this case:

1. Free appropriate public education (FAPE): Whether the school district failed to provide Student with FAPE within the meaning of the IDEA and specifically whether the school district failed to devise an appropriate Individualized Education Program (IEP) in February 2016 and April 2017, including for example, the allegations stated on pages 4-6 of the Complaint such as whether the April 2017 Admission, Review & Dismissal Committee (ARD) failed to consider the "Autism Supplement,"¹ and whether IEP goals and objectives were appropriate in meeting Student's needs;
2. Placement: Whether the school district's proposed change in placement from *** to a Life Skills classroom on *** is reasonably calculated to provide Student with FAPE in the least restrictive environment (LRE), including specifically the allegations stated on pages 4-5 of the Complaint;

¹ 19 Tex. Admin. Code § 89.1055 (e)(1)-(11).

3. Implementation: Whether the school district failed to properly implement Student's February ***, 2016 IEP as written including, for example, whether the school district failed to supply the parent progress reports in a timely manner, failed to supply Student's IEP to *** in a timely manner, and failed to effectuate the agreed-upon placement at *** in a timely manner and other allegations stated on page 6 of the Complaint;
4. Procedural: Whether the school district failed to comply with parental and student procedural rights under the IDEA including for example whether the school district changed Student's IEP without parental input, withheld information it was otherwise obligated to provide to the parent, failed to provide sufficient Prior Written Notice when it was required to do so, failed to supply the parent with IEP progress reports in a timely manner, failed to provide the parent with ARD paperwork in a timely manner, whether the school district "pre-determined" Student's IEP and placement, whether parental comments at ARD meetings were correctly stated in the ARD documents, whether the school district failed to provide the parent with *** at all ARD meetings, and whether the school district withheld records from the parent; and,
5. Other Claims: Whether the school district violated student and parental rights under Section 504 of the Rehabilitation Act of 1973 (504) and the Americans with Disabilities Act (ADA) as stated on pages 8-10 (504) and pages 10-11 (ADA) of the Complaint.

B. Respondent's Legal Position and Additional Issues

Respondent contends the proposed change in placement and return to the *** is appropriate for Student. The school district contends the change in placement includes a *** to *** 2017 with *** the school district by the beginning of the 2017-2018 school year. The school district also contends the proposed program of instruction in all core academic classes provided in a self-contained special education classroom with *** classes for *** and *** is appropriate and the LRE for Student.

The school district raises the following additional issues:

1. Whether Petitioner's claims are limited to those that arose within the one year statute of limitations; and,

2. Whether Petitioner's claims arising under laws other than the IDEA should be dismissed as outside the hearing officer's jurisdiction, including claims arising under 504, the ADA, the Family Educational Rights & Privacy Act (FERPA), Section 1983 or Title IV of the Civil Rights Act of 1984 (civil rights claims) or the Assistive Technology Act of 1998.

IV. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. The school district revise and design an IEP that addresses all areas of Student's needs including changes in placement, services, accommodations, modifications, and new and/or revised IEP goals and objectives or, in the alternative,
2. Continued placement at *** through *** 2017 and the 2017-2018 school year; and,
3. Any other relief the hearing officer deems appropriate or as recommended by Student's evaluators or experts including compensatory educational services and/or staff training.

B. Respondent's Requested Relief

1. Dismiss any claims arising outside the one year statute of limitations rule as applied in Texas;
2. Dismiss all claims arising under laws other than the IDEA; and
3. Find in favor of the school district's proposed program and placement.

V. STATUTE OF LIMITATIONS

Petitioner alleges claims under the IDEA beginning with the ARD meeting on February ***, 2016 and continuing thereafter with Student's placement at *** in May 2016 and the IEPs implemented for the 2016-2017 school year. Petitioner also alleges claims related to the IEP and change in placement proposed at ARD meetings beginning in February 2017 through the spring of 2017 for the upcoming 2017-2018 school year. Petitioner filed Petitioner's request for a due process hearing (the Complaint) on April 25, 2017. Petitioner's cause of action accrued when Petitioner knew or should have known about the alleged action that serves as the basis of Petitioner's Complaint.

Any claims related to the IEP designed at the ***, 2016 ARD meeting accrued on that date. Therefore the one year statute of limitations on those claims ran on ***, 2017.² Petitioner's Complaint was not filed until April 25, 2017. Therefore, to the extent any of Petitioner's claims relate to the design or implementation of the IEP developed at the February ***, 2016 ARD meeting through April 25, 2016 those claims fall outside the one year statute of limitations applied in Texas. *34 C.F.R. § 300.511 (e); 19 Tex. Admin. Code § 89.1151 (c)*. Claims related to the design or implementation of the IEP developed at the February ***, 2016 ARD continued to accrue from April 25, 2016 through the end of the 2016-2017 school year. Those claims survive Respondent's statute of limitations challenge.

Petitioner also alleges the agreed-upon *** placement was not implemented until May ***, 2016. The claim that Petitioner's placement was untimely accrued on that date. Therefore, the one year statute of limitations on that claim ran until May ***, 2017. Petitioner's Complaint raising the untimeliness claim was filed on April 25, 2017 – within the one year statute of limitations from the date the claim accrued. Petitioner's other claims related to the IEPs, proposed change in placement, and the *** developed at ARD meetings in February and May 2017, accrued on or after February ***, 2017. The one year statute of limitations on those claims does not expire until February and/or May 2018 (depending on the date of accrual). Petitioner's Complaint advancing those claims was filed well within the one year statute of limitations for those claims. *34 C.F.R. § 300.511 (e); 19 Tex. Admin. Code § 89.1151 (c)*.

² ***.

VI. CLAIMS OUTSIDE HEARING OFFICER'S JURISDICTION

The jurisdiction of a special education hearing officer in Texas is strictly limited to claims arising under the IDEA. Specifically, a hearing officer has the authority to determine claims related to the identification, evaluation, or educational placement of a student with a disability or the provision of a FAPE to the student. *34 C.F.R. §§ 300.507; 300.511; 19 Tex. Admin. Code §§ 89.1151 (a), 89.1170.*

Therefore, to the extent Petitioner raises claims under laws other than the IDEA, those claims shall be dismissed as outside the jurisdiction of the hearing officer, including specifically claims under Section 504 of the Rehabilitation Act of 1974; the Americans with Disabilities Act; the Family Educational Rights & Privacy Act; the No Child Left Behind Act; Section 1983 and Title VI of the Civil Rights Act of 1964; and, the Technology Related Assistance for Individuals with Disabilities Act.

In addition, Petitioner's Complaint includes a statement placing Respondent "on notice" that Petitioner intends to seek attorney's fees and litigation costs under the IDEA and other federal statutes. The parent of a child with a disability may be entitled to an award of attorney's fees as a prevailing party. An award of attorney's fees is within the sole discretion of either the federal district court or a state court of competent jurisdiction upon appeal of the hearing officer's decision. Reimbursement for attorney's fees and litigation costs are outside the hearing officer's jurisdiction and shall also be denied. *34 C.F.R. § 300.517 (a) (i).*

VII. FINDINGS OF FACT

1. Student is *** years old and eligible for special education services from the school district as a student with Autism (AU), Intellectual Disability, Other Health Impairment and a *** (***).³ Student's *** are in ***, and ****.⁴ Student demonstrates significant

³ Petitioner's Exhibit 27, p. 12 (referred to hereafter as "P. __: __."); P. 28:14.

⁴ Respondent's Exhibit 8, p. 1 (referred to hereafter as "R. __: __."); P.29

- educational/developmental deficits in the areas of ***. Student's adaptive behavior and cognitive functioning are delayed.⁵
2. ***. ***.⁶ Student has a history of *** and *** behaviors both at home and in school. Specifically Student has exhibited *** and ***, ***, *** behavior, and ***. Student loves to ***.⁷
 3. Student has fairly limited ***. Student can *** and is able to socialize *** but needs *** to address *** deficiencies. ***. Student typically ***.⁸
 4. Student's intellectual abilities fall in the very low range with deficits noted in adaptive behavior, ***, *** skills, and social/emotional behaviors. Student tends to *** and this can be an antecedent to *** or ***. Student has a history of ***.⁹ Student is not an appropriate candidate for psychological counseling due to Student's functional level.¹⁰ Student needs a highly structured classroom setting with a high staff to student ratio and a consistent routine with concrete behavioral expectations.¹¹
 5. Student was ***. The placement *** was for one year.¹² An ARD convened on February ***, 2016 to confirm the placement at *** and develop an IEP.¹³ Student's Case Manager at *** served as the school district's point of contact.¹⁴ The February ***, 2016 ARD agreed Student needed a *** highly structured, supervised program. The ARD agreed the *** placement at *** was the least restrictive environment (LRE) for Student at the time.¹⁵
 6. *** is a *** *** serving special needs students with significant behavioral difficulties, ***. *** is licensed by the Texas Department of Family and Protective Services and approved by the Texas Education Agency (TEA) as a non-public placement. *** is also accredited as a *** organization meeting nationally and internationally approved standards of best practice.¹⁶ *** regularly receives a three-year approval from TEA

⁵ P. 17:12; 28:14.

⁶ P. 26:8; R. 13:3; 14:38.

⁷ P.1:1-8;; P. 14:2 P. 13:4-5.

⁸ P. 13:4.

⁹ P. 13:5; P.26:6-7.

¹⁰ P.13:8; 14:4.

¹¹ P. 13:5; P. 14:11.

¹² Joint Exhibit 1 (referred to hereafter as "J. ___"); R. 1:1, 11.

¹³ P.4:11; R.8:27.

¹⁴ Transcript Volume II, page 490 (referred to hereafter as "Tr. ___: ___").

¹⁵ P.3:7-8; R. 8:27.

¹⁶ P.22:4

because the facility exceeds TEA standards.¹⁷

7. In the *** component of the *** program students engage in typical *** activities. Students learn ***, ***. In the *** component students at *** have access to ***, special education teachers, an ***, a ***, ***, and *** classes. ***. *** offers two Extended School Year (ESY) sessions in June and July through early August with a 2-3 week break before the beginning of the next school year.¹⁸ The August break provides students with *** and continuation of *** activities.¹⁹
8. *** staff are called “****” who form personal relationships with the students while maintaining clearly defined behavioral expectations.²⁰ The classrooms at *** are similar in structure to a self-contained Life Skills class in a public school district. The difference is the *** consistent structure available at *** where behavioral and social strategies are implemented in the *** or “****” as well as in the educational environment.²¹
9. Student’s mother and *** attended the February ***, 2016 ARD. ***. A number of the ARD documents were ***. Representatives from *** participated by telephone. Information regarding *** services was provided to Student’s mother including information from the *** (***), *** services, Notice of Procedural Safeguards, and Prior Written Notice.²²
10. The February ***, 2016 ARD designed two sets of IEPs for implementation at ***. The first IEP was to be implemented through the end of the current 2015-2016 school year. The second IEP was to be implemented during the 2016-2017 school year beginning on August ***, 2016 through February ***, 2017 – the deadline for Student’s next annual ARD.²³
11. The first set of IEP goals and objectives were drafted by the school district and approved by the February ***, 2016 ARD. Sources of information used by the ARD included a variety of assessments and evaluations and information from the parent, school personnel, and other professionals. The ARD considered data from a Functional Behavioral Assessment (FBA) conducted by the school district in November 2015.²⁴ The IEP goals and objectives were aligned with the Texas Essential Knowledge and Skills standards. Student’s Present Levels of Academic Achievement and Functional

¹⁷ Tr. II: 571-572.

¹⁸ Tr. II: 603.

¹⁹ Tr. II: 624.

²⁰ P. 22:5-6, 28-34, 37

²¹ Tr. II: 573, 581-582.

²² R. 8:27, 29, 33-35, 39-40, 42, 44, 46, 52-54, 56-62.

²³ R. 8:5-9, 11-14

²⁴ R.8:1-2, 11-14.

Performance (PLAAFs) were considered in the design of the IEP goals and objectives.²⁵

12. A schedule of instructional services, a set of accommodations, and related services were discussed and approved by the February ***, 2016 ARD through the end of the 2015-2016 academic year. The instructional schedule included: ***, *** for 30 minutes three times every six weeks, and direct occupational therapy (OT) for *** minutes/week.²⁶
13. A schedule of instructional services, a set of accommodations, and related services for the upcoming 2016-2017 school year were also developed by the February ***, 2016 ARD. The instructional schedule included: ***, *** for 30 minutes three times every six weeks, and direct OT for *** minutes/week.²⁷ IEP goals and objectives were objective, measureable and aligned with the Texas Essential Knowledge and Skills standards. Student's PLAAFs were considered in the design of the IEP goals and objectives.²⁸
14. An IEP for OT from February 2016 through February 2017 addressed Student's need to develop effective *** skills necessary for learning. The OT IEP included short term objectives to improve Student's ***, ability to transition between activities cooperatively, and participation in *** activities. The OT IEP also included consultation with family members, classroom staff, Student's physician, and other related service personnel as needed.²⁹
15. An IEP for *** was also designed for implementation until the end of the current 2015-2016 school year and for the upcoming 2016-2017 school year. The *** IEP addressed Student's need to develop *** and *** skills, including expansion of Student's ***. *** professionals were designated to provide the service. The *** IEP included objective and measureable IEP goals and objectives.³⁰
16. Student did not actually begin attending *** until May ***, 2016.³¹ ***.³² ***.³³ ***.³⁴ ***.³⁵

²⁵ R.8:5-8.

²⁶ R.8:4, 27.

²⁷ R.8:10, 27.

²⁸ R.8:11-14.

²⁹ P. 6; R.8:30-31.

³⁰ R. 8:5, 8, 10-11, 27.

³¹ J. 1; P. 20:14.

³² P.17:5-61; P. 20:6-13.

³³ P. 17:61.

³⁴ P.8:1-5.

³⁵ P.20:1-4

17. ***.³⁶ The *** included a set of steps to be taken five months before the end of the calendar year of the *** placement. The set of steps required the involvement of staff from both *** and the school district. *** would make recommendations about the design of the *** based on Student's academic and behavioral needs.³⁷
18. The *** noted Student needed an intense behavior management program to decrease attention seeking motivated behaviors. Under the plan, the school district needed to secure adequate staff and provide training to ensure it could provide Student with the highly structured learning environment Student needs. The *** contemplated consult and collaboration with *** staff prior to and during Student's *** as well as on-going consultation with a Board Certified Behavioral Analyst (BCBA).³⁸
19. The *** also contemplated family training to teach the family effective behavior management techniques so Student's behavior would generalize into the home and other settings. The plan contemplated family training would be provided by the school district, ***, and *** (***).³⁹ Services from *** are conditioned upon availability and are secondary to services from the school district.⁴⁰
20. The *** included development of an *** to include both behavior management and *** along with short term assistance or placement from ***. The *** required Student meet a set of criteria in order to implement the *** process including a *** – the criteria and *** were to be stated in ARD documentation along with appropriate staff training.⁴¹
21. Student's ***** under the plan hinged on Student's behavioral progress as measured by reports from *** to the parent and school district. ARD meetings were to be scheduled as needed to make adjustments to Student's IEP. Consultation with a BCBA was contemplated to ensure continuity of educational programming between *** and the school district. On site observations by school district staff and in-home training for the family were also included in the plan.⁴²
22. As part of the intake process *** staff administered assessments to determine Student's baseline level of compliance and performance in various areas.⁴³ *** also created a *** upon Student's ***. The *** addressed a wide variety of Student's educational needs and ***.⁴⁴ The *** was periodically reviewed by Student's ***. The *** included a ***

³⁶ Transcript Volume I, p. 255 (referred to hereafter as "Tr. __: __")R:16:16-17.

³⁷ P.17:49; P. 32:16.

³⁸ R. 16:16.

³⁹ R. 16:17.

⁴⁰ R. 16:14.

⁴¹ R. 16:17.

⁴² R. 16:17.

⁴³ Tr.II:468,556; P. 44:1-4.

⁴⁴ P.14.

Director, representatives from counseling, nursing, and psychiatric services, Student's case manager, ***, Student's program coordinator, and Student's classroom teacher.

23. The *** reviewed Student's *** as a group at least three times over the course of the 2016-2017 school year. A copy of the *** was sent to both Student's mother and to the school district.⁴⁵ Student's *** also convened monthly staffings with input from everyone on the team. The staffings were documented and included reports on Student's needs in all areas.⁴⁶
24. *** provided Students' mother and the school district with grade and IEP progress reports every six weeks. The reports ***. Student's mother found the reports helpful in understanding how Student was doing at ***.⁴⁷ School district staff communicated with *** staff periodically to ensure *** staff would be available to participate in ARD meetings, to draft IEP goals and objectives, and to make arrangements for school district staff visits and observations.⁴⁸
25. The program at *** implemented the IEP developed at the February ***, 2016 ARD.⁴⁹ An on-going social/recreational program to promote the normalization process and development of social skills was also provided at ***. Student participated in ***. *** once a week was also a component of the *** program.⁵⁰
26. Student's medical needs were met with regular visits to the pediatrician and with *** services. *** and *** services were available *** with *** services provided as needed ***. ***. Student had *** in September 2016 and *** before returning to ***.⁵¹
27. When Student ***** Student's short term behavioral goals were aimed at decreasing *** and ***, increasing compliance on tasks, increasing on-task behavior, and decreasing ***, *** behavior, ***, inappropriate ***, and ***.⁵²
28. Student's long term behavioral goals included improving Student's ability to function across all settings when faced with demands whether in school, home, or community settings. Long term behavioral goals also included decreasing ***, uncooperative behavior, inappropriate *** and inappropriate ***, and inappropriate attention-seeking behavior such as ***.⁵³

⁴⁵ P.13:18-26;14:4-10; 14:11-19; Tr. II: 519.

⁴⁶ P.15; P.16:3-9; Tr. II:486-487.

⁴⁷ R.3; R. 14:75-86;Tr. II: 405-415; Tr. III: 895, 1060-1061.

⁴⁸ P.8:6,12-17;P.9:3-5, 7-9,12; P.21:1-6, 19-23; P.42:3-5;

⁴⁹ R. 3.

⁵⁰ P. 13:6-7, 18-19.

⁵¹ P.13:7-8.

⁵² Tr. II: 557-558; P. 14:3-7; R. 3:7

⁵³ Tr. II: 558-559.

29. *** prepared a set of recommendations for Student's *** planning. *** recommended Student demonstrate significant progress towards treatment goals before *** should be considered. The following factors were to be considered in making the *** decision: availability of in-home support; an appropriate educational setting able to meet Student's needs; on-going *** and *** monitoring; a less restrictive environment; and, parent training prior to ***. *** recommended school district staff who would be working with Student receive training from the staff at ***.⁵⁴
30. Student made progress at *** in all areas from May 2016 through May 2017.⁵⁵ Student's *** behavior decreased. Student has never been *****. The behavioral interventions used at *** were effective.⁵⁶ Student ceased *** behavior at ***.⁵⁷ There were *** incident reports generated in response to inappropriate behaviors such as *** and ***.⁵⁸
31. Student could complete ***, was able to complete all *** related activities with *** and occasional *** assistance, worked well with ***, *** greeted staff and peers, followed an established routine, and communicated through ***.⁵⁹ Student also made considerable academic progress and showed growth in social, emotional and behavioral skills.⁶⁰ Student mastered Student's academic IEP goals by the end of the school year.⁶¹ Student increased Student's ability to ***.⁶²
32. Although Student demonstrated significant behavioral progress at ***, Student's behavior there is not necessarily a valid predictor of Student's ability to demonstrate the same level of behavior in a new setting.⁶³ Although Student is *****, Student still needs, for the time being, the support of ***** placement.⁶⁴ However, Student is ready for some kind of incremental *** effort.⁶⁵
33. Student needs a classroom in the school district that is as close as possible to the structured classroom at *** where Student has demonstrated progress. Student needs

⁵⁴ P. 13:14; 14:9.

⁵⁵ R. 3; Tr. II: 705-708, 710-714.

⁵⁶ P.12: 25; R. 3:1-80; Tr. I: 172-173, 221; Tr. II: 523

⁵⁷ Tr. III: 818.

⁵⁸ P. 12: P. 16: 10-13.

⁵⁹ R. 14:38.

⁶⁰ Tr. II: 706-707; 711-712; R. 3:1-6, 18.

⁶¹ Tr.I: 190; R.6:1; Tr. III: 814-815.

⁶² Tr. II: 780.

⁶³ Tr. II: 564, 617-618.

⁶⁴ Tr. II: 621-622, 717-718.

⁶⁵ Tr. II: 622, 665, 718.

- visual supports. Student needs instructional staff with significant training in behavioral interventions. Student needs consistency from staff in implementing the educational and behavioral program.⁶⁶
34. Student has not yet mastered all Student's long term behavioral goals.⁶⁷ Student needs greater familiarity with both the educational setting in the school district and with school district personnel. Student's level of compliance is very closely tied to specific people and specific settings. Student knows *** with certain staff. Student tests new staff with *** behavior and increased levels of ***. Student can be expected to increase inappropriate *** and *** as Student tests new school staff and to have difficulty generalizing behavior to a new setting.⁶⁸ Generalization is the ability to behave in a certain way across a variety of settings.⁶⁹ Student has not yet learned to generalize Student's behavior across all settings.⁷⁰ Student needs greater familiarity with the new school setting and new school personnel for a successful ***.⁷¹
35. Student is not ready to fully transition back into the school district because Student is still ***.⁷² Student responds very well to the paraprofessional in the classroom who Student met when Student first came to ***.⁷³ *** staff is available to visit *** to support Student's *** and assist the school district and Student's family in replicating some of the structure of the classroom at ***.⁷⁴
36. An appropriate *** for Student includes a *** that is comfortable for Student, more parent training, more frequent home visits, and collaboration between *** and the school district with constant communication and staff training.⁷⁵ Typically this kind of *** ***.⁷⁶
37. A successful transition for Student means not simply a transition from the highly structured *** placement to a different educational environment but also to Student's ***.⁷⁷ Student's success depends on consistency. A specific set of goals and objectives

⁶⁶ Tr. II: 722-723

⁶⁷ Tr. II: 484,779; Tr. III: 841.

⁶⁸ Tr. II: 592-593; Tr. III: 818, 825.

⁶⁹ Tr. II: 562.

⁷⁰ Tr. II: 564, 661, 714.

⁷¹ Tr. II: 561-562.

⁷² Tr. II: 570-571.

⁷³ P. 41::2; Tr. II:523-524, 525.

⁷⁴ Tr. II: 722.

⁷⁵ Tr. II: 470-472, 660-661, 718; Tr. III: 810.

⁷⁶ Tr. II: 473

⁷⁷ Tr. II: 722.

are needed for in-home and parent-training, community based instruction, and parent counseling as components of Student's ***. Student needs a consistent level of managed prompts, reinforcers, and consequences from ***, Student's family, and from the school district.⁷⁸

38. Student's family needs to develop skills to address Student's behavior the same way it is addressed in the classroom.⁷⁹ Parent training is needed so Student's mother and *** understand and can implement a set of effective behavioral interventions at home. For example, Student's mother needs to know how to stop escalating behavior before it becomes ***.⁸⁰
39. Student needs visual supports and a visual schedule at home – just as Student has at school. Student needs to know the same behavioral expectations apply at home as they do at school. Student's mother needs to learn and implement the same commands and consequences as those Student experiences in the educational setting.⁸¹ Parent and in-home training should have been provided as soon as Student was placed at *** so that ***.⁸² Parent training does not necessarily require an evaluation first.⁸³
40. Student needs an in-home training evaluation and in-home training services before Student ***.⁸⁴ An in-home training assessment needs to be conducted with Student in the home.⁸⁵ Community-based instruction can also be a component of in-home training. The in-home trainer goes with the family into the community and works on generalizing skills in a community setting. An in-home trainer can show the family how to handle Student's behavior as it is occurring.⁸⁶ The school district's proposed plan includes an in-home training evaluation ***.⁸⁷
41. In February 2017, prior to Student's annual ARD, the school district's educational diagnostician requested a description of a general plan for ***. The Case Manager suggested the following: ***.
42. The Case Manager recommended monitoring Student's behavior for about one month with the *** in the school district phase. A *** and in the school district would then be

⁷⁸ Tr. II: 583-584.

⁷⁹ Tr. II: 723.

⁸⁰ Tr. II: 724.

⁸¹ Tr. II: 725.

⁸² Tr. II: 726-727.

⁸³ Tr. II: 747.

⁸⁴ Tr. III: 1123, 1125-1126.

⁸⁵ Tr. II: 603, 615.

⁸⁶ Tr. II: 728-729.

⁸⁷ R. 5.

- added to the weekly schedule if Student did well. If Student continued to do well *** in the school district. The school district would provide transportation to and from the school district.⁸⁸
43. Transitions that have been historically successful from *** included a “two-way” approach where school district personnel spend time with the staff and the student in the classroom and then *** staff go to the school district and spend time with the staff and student there. The staff at *** has a lot of experience assisting students to ***. School district staff and school district behavioral consultants conducted some observations at *** but the “two-way” approach was not implemented.⁸⁹
44. A series of ARD meetings were held beginning in February 2017, April 2017 and May 2017. The purpose of the meetings was to plan for Student’s ***.⁹⁰ School district staff communicated with *** to exchange information in planning for and following up on the ARD meetings in the spring of 2017.⁹¹
45. The February ***, 2017 ARD was Student’s annual ARD.⁹² Student’s mother and *** attended the meeting. ***, *** staff (including Student’s teacher, the Case Manager, and the *** ***) participated in the February 2017 ARD by telephone. Representatives from *** also participated in the ARD.⁹³ Student’s teacher at *** drafted a set of proposed IEP goals and objectives along with a proposed BIP. The draft IEP and BIP were provided to the school district prior to the February 2017 annual ARD.⁹⁴
46. At the February ***, 2017 ARD, the school district proposed a *** with placement in a Life Skills classroom at Student’s *** with *** and *** in general education.⁹⁵ The *** proposed Student return to the school district *** beginning with Student’s attendance in Extended School Year (ESY) services beginning in June 2017. The initial proposal followed the Case Manager’s general recommendations. Student would attend ESY in June for *** and then return to ***. *** would be added during the month of July. Student would ultimately return full time to the school district by the beginning of the 2017-2018 school year. The school district proposed either providing transportation or reimbursing the parent.⁹⁶

⁸⁸ P. 42; Tr. II: 476-477.

⁸⁹ Tr. II: 576-577, 663-665, 729.

⁹⁰ P. 31, 32, 38; R.6:18-19.

⁹¹ R.6.

⁹² J. 1.

⁹³ R. 14:14,16-18.

⁹⁴ Tr. II: 519-520.

⁹⁵ R. 14:7; Tr. III: 875.

⁹⁶ R. 14:8.

47. Student's mother expressed concerns having Student ***. She reported *** was a difficult transition for Student. The February ***, 2017 ARD agreed to postpone further discussions about the *** until later in the spring because there had not yet been sufficient parent training and to gather more data about Student's progress.⁹⁷
48. Student needs implementation of the *** program used at *** for academic instruction Student is familiar with. Student needs a data collection system for not only inappropriate behaviors but also to track replacement behaviors.⁹⁸ Student needs a *** student to teacher ratio in the classroom. Student also needs to *** to facilitate redirection as needed.⁹⁹ Student needs increased interactions with the teacher and paraprofessional assigned to the Life Skills class prior to Student's **** to increase the association between the Life Skills teacher and ***.¹⁰⁰
49. The teacher assigned to teach the Life Skills program proposed for Student is highly trained and qualified. The teacher has extensive training and is knowledgeable about methods and strategies for teaching students with autism, Applied Behavior Analysis (ABA) strategies, ***, *** systems such as the ***, and behavior management. The teacher is qualified to teach special education grades early childhood through 12th grade under a Texas Educator Certificate issued by the State Board for Educator Certification. The teacher also has current *** certification.¹⁰¹
50. The teacher assigned to the Life Skills class visited and observed Student twice in the classroom at ***. Each observation was about 2-2.5 hours for a total of 4-5 hours. The Life Skills teacher worked directly with Student for about 40-45 minutes on one of the visits. The Life Skills teacher received no direct training from *** staff. The Life Skills teacher was able to quickly develop a rapport with Student. Student interacted well with the teacher. Student was cooperative and responsive. The Life Skills teacher was successful in re-directing Student when Student became noncompliant.¹⁰² The Life Skills teacher does not need any more training in order to meet Student's needs in the proposed Life Skills classroom.¹⁰³
51. The Life Skills classroom is larger in area than the classroom at ***. The Life Skills teacher uses a visual schedule organized sequentially so the students know what is happening next. This provides the students with predictability and consistency. Student has friends at *** and would have the opportunity to be with non-disabled peers. Everything provided in the classroom at *** can be provided in the *** Life Skills

⁹⁷ Tr. III: 877-880, 956-997).

⁹⁸ R. 17:7.

⁹⁹ J.2; R. 17:6-7.

¹⁰⁰ R. 17:6.

¹⁰¹ Tr. I: 392; 404, 405-415; R. 9 Tr. II: 405-415; Tr. III: 895, 1060-1061; P. 35: 2-6; 23-24, 31, 37-40.

¹⁰² Tr. I: 396, 398-399; Tr. III: 914, 951; R. 17:4-5.

¹⁰³ Tr. III: 951, 953, 965-966.

classroom. A BCBA is available to provide on-going consultative support to the teacher throughout the year. The Life Skills teacher is familiar with behavior data collection and would collect that data to establish a baseline of Student's behavior. The purpose of data collection would be to design, and revise as needed, Student's behavioral IEP goals. The teacher would also implement ABA strategies. In sum, the Life Skills teacher can address Student's behavior in the Life Skills classroom at the ***.¹⁰⁴

52. A draft IEP was provided to the parent *** at the February ***, 2017 annual ARD. The IEP goals were read ***. Student's mother waived reading *** of each objective. Parental questions were addressed and answered during the meeting. The February ***, 2017 ARD discussed and approved the proposed IEP, Behavior Intervention Plan (BIP), addressed the Autism Supplement, and discussed *** services. Student's mother and staff from *** agreed to the proposed IEP, BIP, and set of related services.¹⁰⁵ The BIP was based, in part, on the results and recommendations of a FBA conducted by *** in February 2017.¹⁰⁶ The ARD also discussed and approved IEPs for ***, behavior, and OT as related services. Parental concerns about Student's use of *** were discussed and addressed.¹⁰⁷
53. The February ***, 2017 IEP and BIP, along with the IEPs for related services, met Student's individualized academic, behavioral, ***, and *** needs based on Student's present levels of performance and a variety of information sources including prior evaluations, and information from the parent, school personnel and other professionals.¹⁰⁸ The February ***, 2017 IEP included a set of accommodations based on Student's individualized needs including use of a visual schedule.¹⁰⁹
54. The February ***, 2017 IEP included an instructional schedule of Student's academic classes for the remainder of the 2016-2017 school year through May ***, 2017. Student's classes included: *** (30 minutes direct 3 times every six weeks), and direct OT(*** minutes/week).¹¹⁰
55. The February ***, 2017 IEP also included an instructional schedule for the upcoming 2017-2018 school year beginning August ***, 2017 through February ***, 2018. Student's classes included: *** (30 minutes 3 times every six weeks), *** services once a day and direct OT (***) minutes/week).¹¹¹

¹⁰⁴ Tr. I: 418, 426-427, 428-429, 434, 437, 438-439, 442-443.

¹⁰⁵ R. 14:5, 7, 18, 24, 37-86; Tr. II: 526-528.

¹⁰⁶ R. 14:37-44.

¹⁰⁷ R. 14:18, 54-59.

¹⁰⁸ R. 14:1-8

¹⁰⁹ R.14:5, 18, 24.

¹¹⁰ R. 14:5.

¹¹¹ R. 14:7, 60-74.

56. Student's mother picked up her copy of the February 2017 ARD documents on March ***, 2017.¹¹² Prior Written Notice was provided to Student's mother.¹¹³ A number of Notices and Consent forms were provided to Student's mother ***.¹¹⁴ Student's mother confirmed receipt of Notice of Procedural Safeguards *** at the February ***, 2017 ARD.¹¹⁵
57. Student's *** requested ***. It took almost one month for the full set of February 2017 ARD documents *** provided to Student's mother along with Prior Written Notice. This contradicted school district recommended practice to provide ARD documents within 3-5 days of an ARD.¹¹⁶
58. Another ARD convened on April ***, 2017. Notice of the ARD, Prior Written Notice, and Notice of Procedural Safeguards were provided to Student's mother ***.¹¹⁷ The purpose of the ARD was to continue to discuss the proposed *** to be implemented during ESY. In response to parental concerns the school district proposed a revised *** *** with Student spending *** at *** and the *** during ESY returning to the school district *** by the first day of school on August 28, 2017. No services from the school district were offered from August ***, 2017.
59. At the April ***, 2017 ARD the staff at *** recommended continuing to implement Student's behavior therapy IEP during the 2017 proposed ESY because Student was on track to master Student's academic goals. *** staff reported Student's *** behaviors were reduced since Student's initial placement at ***. School staff agreed to a parental request to share effective reinforcement techniques for use at home. The school district proposed an in-home training assessment to which Student's mother provided the requisite consent ***.¹¹⁸ The school district has not yet conducted an in-home training assessment.¹¹⁹
60. Although Student's mother agreed to the ESY services and summer schedule, she did not agree with the proposal to return Student *** to the *** or to the lack of services between the end of ESY and the beginning of school.¹²⁰ The ARD ended in disagreement on the

¹¹² R. 10; R. 14:19.

¹¹³ R. 14:19.

¹¹⁴ R. 14:29-36.

¹¹⁵ R.14:19; R. 16:22-23.

¹¹⁶ R. 14: 26; R. 10: Tr. I: 246-247; Tr. II: 764; Tr. III: 883, 892.

¹¹⁷ R.15: 1, 15-17 19, 21, 23.

¹¹⁸ P. 32:14-15, 20; R. 6:1, R. 16:13-14; Tr. I: 216, Tr. II: 515-516, 779; Tr. III: 515-516, 885-886, 1098.

¹¹⁹ Tr. II: 479.

¹²⁰ R. 15:13-14, 21; Tr. III: 884, 888-897.

placement issue and lack of services in August but agreed to reconvene.¹²¹ The ARD reconvened on April ***, 2017, to continue discussions about the proposed ***. Student's mother and *** attended. An *** was again present. *** staff again participated by phone. A representative from *** attended.¹²² Student's mother continued to agree to the ESY program but also continued to disagree with the school district's proposal to return Student to the school district for the 2017-2018 school year. Student's mother expressed concerns about Student's continued *** behavior. Student's *** voiced concerns over Student's inappropriate *** which were often precursors to *** behavior.¹²³

61. The *** in the *** was now included in the set of ARD documents for the April ***, 2017 meeting.¹²⁴ Despite a successful *** the family continued to express concerns over Student's inappropriate *** and *** behavior.¹²⁵ Student's *** requested the ARD documents be provided ***. A copy of the ARD was provided at the end of the April *** ARD to Student's mother along with Prior Written Notice.¹²⁶ The family had some concerns *** for Student's mother.¹²⁷
62. From November 2016 to February 2017, Student had *** successful on campus visits with family. Student also had *** unsuccessful *** visits ***. Student's mother reported Student exhibited *** and *** during ***.¹²⁸ Student's mother and other *** need more parent training to support Student's successful ***.¹²⁹
63. Parent and *** need CPI training before Student ***.¹³⁰ A planned *** in June, 2017 was *** because Student exhibited *** behavior *** including *** and ***.¹³¹ Student still exhibits *** when Student ***.¹³² Student's mother, ***, and *** need training in *** techniques.¹³³
64. Student's mother needs in-home training with Student in prompting, compliance, and

¹²¹ R. 15:14.

¹²² R. 16:12-13.

¹²³ R. 16: 12, 13-15; Tr. II: 363, 425; Tr. III: 885-886, 892-893.

¹²⁴ R.16:16-17.

¹²⁵ R. 16:13-14.

¹²⁶ R. 15:21; Tr. III: 892-893.

¹²⁷ Tr. II: 478.

¹²⁸ P. 14:12.

¹²⁹ P. 15: 46, 54; Tr. II: 503.

¹³⁰ Tr. I: 353-354; Tr. III: 1097.

¹³¹ Tr. II: 774.

¹³² Tr. II: 718-719.

¹³³ R. 17:5.

behavior momentum. She also needs training in setting up a structured schedule, learning effective communication strategies and assistance in coping with feeling overwhelmed.¹³⁴ She needs help *** and training in the consistent use of appropriate behavior interventions.¹³⁵ Behavioral issues during Student's *** confirm the need for more parent training¹³⁶

65. *** provided Student's mother with three family training sessions but they did not begin until February 2017.¹³⁷ Parent training at *** can be requested by the parent or recommended by the *** – however, *** does not impose parent training on a parent.¹³⁸ The delay in providing parent training at *** was due to a lack of *** staff.¹³⁹
66. The school district offered Student's mother parent-training opportunities during the 2016-2017 school year. The trainings were provided through Region V Educational Service Center over two consecutive days. One of the training topics was *** – not an especially helpful topic for Student's mother. The Region V trainings were not individualized for Student. Student's mother was unable to attend the trainings offered because Student's ***.¹⁴⁰
67. The school district enlisted two behavioral consultants during the 2016-2017 school year who observed Student at ***, wrote reports, and made recommendations related to Student's ***.¹⁴¹ One of the BCBA consultants included a detailed set of training recommendations for both school district staff and for the family in a February 2017 report.
68. The BCBA recommended parent training should begin in February 2017 *** by the beginning of the 2017-2018 school year.¹⁴² The school district did not make those reports available to Student's mother or share or discuss the reports at ARD meetings in the spring of 2017.¹⁴³ Both consultants also prepared additional reports after the spring 2017 ARD meetings that were not shared.¹⁴⁴

¹³⁴ Tr. III: 1098, 1118-1123.

¹³⁵ Tr. III: 1003, 1007.

¹³⁶ Tr. II: 471-472, 721-722.

¹³⁷ P. 21:7; Tr. II: 566.

¹³⁸ Tr. II: 503

¹³⁹ R.14:18.

¹⁴⁰ Tr. I: 248-249; Tr. II: 773-774; P. 9:1, 6.

¹⁴¹ J.2; R. 2; R. 17.

¹⁴² R.2; R.4:14.

¹⁴³ Tr. III: 918-919, 9200-921, 978, 1099, 1104, 1131.

¹⁴⁴ R. 17.

VIII. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. *20 U.S.C. § 1400(d)*. The school district has a duty to provide FAPE to all children with disabilities ages 3-21 who are enrolled in the school district. *34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a) (3)*.

The school district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. *20 U.S.C. § 1401(9); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 188-189, 200-201, 203-204 (1982)*.

B. IEP

In meeting the obligation to provide FAPE the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, and the duration and frequency of the services and the location where the services will be provided. *34 C.F.R. §§ 300.22, 300.323(a)*.

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP

and placement.¹⁴⁵ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case the school district was obligated to provide Student with FAPE during the 2016-2017 school year *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit for the upcoming 2017-2018 school year. The burden of proof in this case is on Petitioner to show the school did not do so. *Id.*

In addition, Petitioner seeks continued *** placement at *** at school district expense with ***. The burden of proof is on Petitioner to show the proposed placement in the Life Skills classroom on *** is not appropriate *and* that continued placement at *** is essential and primarily oriented to enable Student to obtain an education. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370(1985); *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 299 (5th Cir. 2009).

D. IEP Goals and Objectives

In developing an IEP the ARD must consider the student's strengths, parental concerns for enhancing the student's education, the results of the most recent evaluation data, and the student's academic, developmental and functional needs. For students whose behavior impedes his or her learning or the learning of others, the IEP must also consider positive behavioral interventions and supports and other behavioral strategies. 34 C.F.R. § 300.324 (a). The ARD is also required to review, at least annually, the student's IEP and make any revisions needed to address lack of expected progress or on the basis of any re-evaluations, information provided by parents, or the student's anticipated needs. Consideration of the student's behavioral needs must be addressed in the annual review. 34 C.F.R. § 300.324 (b).

The evidence showed the ARD committees that met in February and April 2017 developed goals and objectives for the remainder of the 2016-2017 school year and for the upcoming 2017-2018 school year in compliance with these federal regulatory requirements. The proposed goals and objectives in February and April 2017 were drafted by the staff at ***,

¹⁴⁵ 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).

revised based on ARD discussions, and then approved by the 2017 spring ARD committees. The Behavior Intervention Plan was based on a FBA completed by *** just before the first ARD meeting in February. Target behaviors were identified and a set of detailed interventions to address those behaviors and foster replacement behaviors were included in the BIP. Academic IEP goals and objectives addressed Student's individualized academic needs along with IEP goals and objectives for Student's related services needs in occupational therapy, behavior therapy, and ***.

The IEPs also addressed Student's needs to develop and improve *** skills, *** and life skills, and personal and social skills. The evidence showed the IEPs were developed on the basis of formal and informal data, including updated information from parent, school personnel, and *** staff. Petitioner's real criticism is not with the IEP goals and objectives but instead with the school district's proposed placement for *** for the upcoming 2017-2018 school year.

E. Autism Supplement

For students with autism in Texas, the ARD must also consider whether the student's IEP should include the following: extended educational programming, daily schedules reflecting minimal unstructured time and active engagement in learning activities, in-home and community-based training, positive behavior support strategies based on relevant information, futures planning for post-secondary environments, parent/family training and support, suitable staff-to-student ratios, communication interventions, social skills supports, professional educator/staff support and teaching strategies based on peer-reviewed, research-based practices for students with autism. *19 Tex. Admin. Code § 89.1055 (e)*. This regulation is commonly referred to as "the Autism Supplement."

The evidence showed the IEPs approved at the February and April 2017 ARD meetings did consider and address Student's needs as required by the Autism Supplement. The evidence showed a number of strategies and services stated in the Autism Supplement were included in Student's IEPs.

F. In-Home and Parent Training

In Texas, parent and family training must be provided by qualified personnel with experience in autism spectrum disorders. The parent and family training can:

- Provide the family with skills necessary for the student to succeed in the home and community setting;
- Include information to increase parent knowledge of specific teaching and management techniques related to the student's curriculum; and,
- Facilitate parental carryover of in-home training such as behavior management strategies, developing structured home environments, and/or communication training, so parents can promote the continuity of interventions across all settings.

19 Tex. Admin. Code § 89.1055 (e) (6).

The evidence showed Petitioner and Petitioner's family need in-home and parent training to address ***, ***, and inappropriate *** and support Student's generalization of the appropriate behaviors learned at ***. The experts were consistent in their recommendations to implement appropriate parent training in advance of Student's ***. Instead, the evidence showed the school district delayed providing those services.

The evidence showed there was no justification for that delay. Instead, the evidence supported implementation of a fairly vigorous and comprehensive parent training program aligned with the same kind of behavioral and environmental supports and features provided in the educational environment. The evidence showed Student's mother and *** expressed their concerns about Student's behavior at home in ARD meetings. The school district's own consultants made a set of detailed recommendations about the contours of parent and family training and advised parent training should begin as early as February 2017 -- well in advance of the beginning of the 2017-2018 school year.

The record also shows there were opportunities for parent training at *** when the parent

visited that were missed – when both the staff at *** and the school district left it to parental request to initiate training. Had the school district designed and implemented a parent/family training program that included the features recommended by its own experts Student’s mother might have been more receptive to Student’s *** for the upcoming 2017-2018 school year.

G. FAPE

1. The Four Factors Test

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

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

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

2. Individualized on the Basis of Assessment and Performance

First, the evidence showed the IEP implemented during the relevant time period was individualized on the basis of assessment and performance. For the period of time from April ***, 2016 to February 2017 and from February 2017 through the end of the 2016-2017

school year the IEP goals and objectives addressed Student's needs based on assessment and performance. The IEP goals and objectives proposed for the 2017-2018 school year also addressed all areas of Student's needs, included academic goals and objectives in line with Student's functional performance, and were based upon information from the staff at *** who worked with Student on a daily basis.

3. Least Restrictive Environment

Second, the evidence showed Student needed *** placement for the remainder of the 2016-2017 school year. ***** placement was not in dispute through May 2017. The evidence further showed the school district's proposed placement in a Life Skills classroom at the *** met the IDEA's preference for educating children with disabilities to the maximum extent appropriate with their non-disabled peers. *34 C.F.R. § 300.114.*

In the proposed self-contained special education Life Skills classroom Student would have an opportunity to access non-disabled peers in *** and *** and interact with friends. Furthermore, the proposed placement contemplated an appropriate student to teacher ratio. The evidence showed the assigned Life Skills teacher was trained and experienced in the use of appropriate behavioral strategies to be implemented in the proposed setting. All features of the classroom at *** can be replicated in the Life Skills classroom.

However, successful *** also necessarily requires ***. The evidence showed the school district proposed such a plan and was willing to revise the schedule to meet parental concerns and suggestions by the staff at ***. Therefore, to the extent the school district's proposed placement in the Life Skills classroom at the *** was predicated on a *** the record shows the proposed change in placement met the requirements for placement in the least restrictive environment. *34 C.F.R. § 300.114.*

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

Third, the evidence showed Student's services at *** were provided in a coordinated and collaborative manner by *** staff. *** provided the school district and the parent with regular IEP progress reports and *** reviews. The evidence showed *** staff cooperated with the school district in making arrangements for school district staff and its consultants to visit and observe Student in ***. The Life Skills teacher was allowed to observe and then directly interact with Student on a visit to *** without interference or objection. The evidence suggests teaching personnel from *** and the school district could work in a coordinated, collaborative manner in implementing a ***.

The record reflects there was fairly good cooperation and communication between *** and the school district. However, the *** was a little vague on how the staff at *** and the school district would work collaboratively together in ***. The evidence supports the inference the school district did not feel the need to coordinate as closely with the staff at *** as recommended. However, there is no reason to conclude they could not have done so had the two groups actually sat down and worked out a ***.

The parent training offered by the school district was not particularly helpful to the parent. When the parent had to miss a scheduled training due to ***, the school district did not follow up with her to reschedule. In that sense the parent training offered during the spring of 2017 was not well coordinated between the parent and the school district as key stakeholders. Furthermore, parent training at *** was largely initiated only at parental request and this proved to be insufficient. Student's mother and family are not ***. The lack of sufficient parent and family training was a failure to provide those services in a coordinated and collaborative manner.

However, the evidence also suggests Student's mother did not make much effort to follow through on requests for parent training. Student's mother must be willing to schedule and participate in the parent training recommended by the experts. She must reschedule any parent training sessions that she cancels or postpones within a reasonable amount of time and in collaboration with the parent and in-home trainers. The school district cannot be held accountable if Student's mother cancels a training session without collaborating with the school district to reschedule.

Furthermore, the school district did not include any support services to help Student's mother cope with feeling overwhelmed by her circumstances. A school district may provide related services that address parental needs. Those services may include parent counseling and helping parents acquire the necessary skills that will allow them to support the implementation of their child's IEP. *34 C.F.R. § 300.34 (c) (8)*. Social work services may also be a related service. Social work services may include group and individual counseling with the family, addressing problems in the student's living situation that affect the student's adjustment in school, and, assisting in developing positive behavioral intervention strategies. *34 C.F.R. § 300.34 (c) (14)*.

The school district invited the participation of *** to ARD meetings but the *** resources appear to be fairly limited. The school district could have done more to work in a coordinated, collaborative manner with the parent and family at an earlier point in time to address parental and family needs to effectively support Student's generalization of skills. The failure to design and implement comprehensive parent training beginning in February 2017 was a critical piece missing from Student's IEP and the proposed ***.

5. Academic and Non-Academic Benefits

Fourth, the evidence supports the conclusion Student received both academic and non-academic benefits from the program provided at *** from Student's initial placement there through the date of the due process hearing. Student improved in all areas. While Student may not have mastered Student's long-term behavioral goals, the evidence showed improvement in academic, behavioral, and *** skills.

The IDEA does not require the IEP to guarantee a certain level of accomplishment – only that the IEP is reasonably calculated to meet Student's needs given Student's unique circumstances. *Endrew F. v. Douglas Cnty. Sch. Dist., 137 S. Ct. 988 (2017)*. Furthermore, the school district is not required to provide Student with the best possible education. Student does not need to improve in every academic and non-academic area to receive an educational benefit. The issue is not whether the school district could have done more. Instead, the inquiry is

whether Student received an educational benefit. *Houston Ind. Sch. Dist. v. V.P.*, 582 F. 2d 576, 590 (5th Cir. 2009). The evidence showed Student received more than a de minimus educational benefit from the program provided given Student’s unique circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist.*, *supra*.

6. ***

7. ***

8. Implementation of the IEP

Although the evidence showed the school district took a little over two months to effectuate Student's placement at ***, the evidence also showed Student received the full *** of *** placement ***. Furthermore, under the stay put rule as applied in this case, Student spent a little over two more months in the *** placement during the pendency of this litigation. *34 C.F.R. § 300.518*. Therefore, to the extent the school district failed to timely implement the *** placement, any harm that might have occurred as a result was minimal.

The evidence showed IEP progress reports were provided to the parent in a timely manner throughout Student's placement. There was very little evidence, if any, that the school district failed to provide Student's IEP to *** in a timely manner. The evidence shows otherwise – the IEP drafted by the school district was discussed and approved at the February 2016 ARD attended by staff from ***.

There is no credible evidence the school district went outside the ARD process in developing Student's IEPs over the relevant time period. Although school district staff may have consulted and collaborated with *** staff and/or one with outside consultants all IEPs were presented, discussed, and approved by the ARD committees. All decisions about Student's program and placement were made by the ARD committees over the relevant time period.

9. Procedural Issues

Petitioner did not meet Petitioner's burden of proving the school district violated parental procedural rights under the IDEA. The school district provided Student's mother with the requisite Prior Written Notice, Notice of ARD meetings, consent for evaluations notices, and ARD documents ***. *34 C.F.R. § 300.503 (a)(c)*. ***. ***. The IDEA does not require ***. A copy of the IEP must be provided to the parent at no cost. *34 C.F.R. § 300.322 (e)(f)*.

The record supports the conclusion the school district met its responsibilities under these procedural safeguards. Furthermore, ***, Student's mother actively participated in ARD meetings,

asked questions, advocated for services, and stated her position with regard to all aspects of Student's education and placement. The school district considered and responded to parental concerns and objections, and attempted to address them. Although Student's mother may have ***.

There is very little evidence the school district "pre-determined" Student's placement. The ***** placement for ***. It was reasonable for the school district to consider and begin to plan for *** at some point. Indeed, ***. Any discussions, staffings, or consultations with *** staff or outside consultants do not lead to the conclusion the school district "pre-determined" Student's placement. Instead, the evidence shows otherwise when the school district agreed in early February 2017 to delay a decision about Student's return in order to provide the parent with more training and to collect additional data on Student's progress at ***.

There is some evidence the ARD paperwork from the February 2017 ARD took more time than it should have to get to the parent and the school district did not share the consultant reports. Even so the evidence showed these factors did not significantly impede the parent's opportunity to participate meaningfully in making decisions about Student's educational program. Instead the evidence showed otherwise. Student's mother was able to articulate her position and requested the parent training recommended by the consultants without reviewing their reports.

Any delay in providing ARD paperwork to the parent, failing to share consultant reports, or indeed any of the alleged procedural violations, did not result in the denial of FAPE. None of those violations, if any, impeded Student's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. *34 C.F.R. §300.513 (a)(2)*.

IX. CONCLUSIONS OF LAW

1. Respondent provided Petitioner with a free, appropriate public education and devised an appropriate IEP in February and April 2017, including appropriate IEP goals and objectives and consideration of strategies for students with autism under state law. Petitioner did not meet Petitioner's burden of proof on this issue. *Andrew F. v. Douglas*

Cnty. Sch. Dist., 137 S. Ct. 988 (2017); Schaffer ex. rel. v. Weast, 546 U.S. 49, 52 (2005); C.G. v. Waller Ind. Sch. Dist., 2017 U.S. App. LEXIS 11139 (5th Cir. 2017); Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245 (5th Cir. 1997); 34 C.F.R. §§ 300.22, 300.323 (a); 19 Tex. Admin. Code § 89.1055 (e).*

2. Respondent's proposed change in placement for Petitioner from a *** to a Life Skills classroom on Petitioner's *** for the 2017-2018 school year was reasonably calculated to provide Petitioner with a free, appropriate public education in the least restrictive environment. *34 C.F.R. §300.114*. However, Respondent's proposed *** *** *** placement to the placement on the *** lacked critical components including sufficient parent and in-home training and lack of collaboration between *** *** staff and school district staff in setting the transition criteria, a target date, schedule, and providing support to Petitioner in the Life Skills classroom. Therefore, the ***, as a component of the proposed change in placement, was not reasonably calculated to provide Petitioner with the requisite educational benefit. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., supra*.
3. ***. ***.
4. Respondent implemented Petitioner's IEPs as written during the relevant time period and therefore Petitioner failed to meet Petitioner's burden of proof that a failure to properly implement the IEP resulted in the denial of a free, appropriate public education. *Schaffer ex. rel. v. Weast, supra*.
5. Respondent complied with parental and student procedural rights under the IDEA. Any procedural violations did not impede Petitioner's right to a free, appropriate public education, significantly impede the parent's opportunity to participate in decision-making regarding the provision of a free, appropriate public education, or cause a deprivation of educational benefit. *34 C.F.R. §§ 300.503 (a)(c); 300.504(a)(d); 300.513 (a)(2)*.
6. All of Petitioner's claims arising under any laws other than the Individuals with Disabilities Education Act are outside the jurisdiction of a special education hearing officer in Texas. *34 C.F.R. §§ 300.503 (a); 300.507; 19 Tex. Admin. Code § 89.1151 (a)*.
7. Petitioner's request for an award of attorneys' fees and litigation costs are outside the jurisdiction of a special education hearing officer in Texas. *34 C.F.R. §§ 300.516, 300.517; 19 Tex. Admin. Code § 89.1185 (n)*.
8. Petitioner's claims that accrued beginning on February ***, 2016 through April ***, 2016 are dismissed as outside the one year statute of limitations. *34 C.F.R. § 300.511 (e); 19 Tex. Admin. Code § 89.1151 (c)*.

X. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief is **GRANTED IN PART AND DENIED IN PART AS FOLLOWS:**

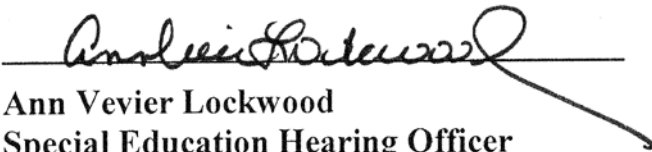
1. Respondent provide parent training to parent, Petitioner's *** as recommended by the Consultant Reports dated February ***, 2017 (Joint Exhibit 2) and May ***, 2017 (Respondent's Exhibit 17, paragraphs 2-5) including crisis prevention intervention techniques;
2. Respondent implement the parent training no later than the third week of the upcoming 2017-2018 school year, or beginning on a date agreed to by the parties, in collaboration with staff at *** *** as recommended in the Consultant Reports dated February ***, 2017 (Joint Exhibit 2) and May ***, 2017 (Respondent's Exhibit 17, paragraphs 2-5);
3. Respondent implement the *** *** as recommended in the Consultant Report dated February ***, 2017 (Joint Exhibit 2, beginning at the bottom of page 2 up through the middle of page 3) beginning on a date recommended by staff at ***;
4. Respondent conduct an in-home training assessment and provide in-home training to Petitioner in the presence of Petitioner's parent, *** as recommended in the Consultant Report dated February ***, 2017 (Joint Exhibit 2, page 3);
5. The parties convene an ARD no later than 10 calendar days from the date of this Decision, or on a date agreed to by the parties, for the purpose of designing parent training goals, a schedule for parent training, scheduling the in-home training assessment and designing a schedule for in-home training services, consideration of parent counseling and/or social work services, and a schedule for implementing the *** schedule as described in paragraph 3, supra;
6. Petitioner's mother shall cooperate and collaborate with Respondent in scheduling and participating in the parent training, the in-home training assessment, and in-home training services as ordered; Petitioner's mother shall also facilitate the participation of Petitioner's *** in the parent and in-home training sessions under the schedule agreed to by the parties;
7. Respondent shall not be held accountable for any parent and/or in-home training sessions that are cancelled by Petitioner's mother that she does not take steps to reschedule within 10 school days of the date of the scheduled session or as otherwise agreed to by the parties;
8. Respondent shall confer with the staff at *** prior to the ARD for the purpose of discussing the recommendations of the staff at *** regarding: (i) criteria Student needs to meet before the ***** can begin, (ii) the date the *** can be expected to begin; (iii) the use of the *** paraprofessional as a support service for Petitioner in the Life Skills classroom as the *** is implemented, and (iv) a target date for *****; Respondent shall

also invite the staff at *** to the ARD to participate in the design and implementation of the *** *** schedule including setting criteria for Petitioner to begin the ***, setting a target date for *** *** to be completed, use of the *** paraprofessional as a support service, and parent training at ***;¹⁴⁶

9. The ARD shall design a schedule for use of the paraprofessional currently assigned to Petitioner's classroom at *** to serve as a support service for Petitioner in the Life Skills classroom as the *** is implemented, fading out that service upon recommendation of the school district's consulting BCBA and the Life Skills classroom teacher;
10. Petitioner's claims arising under any law other than the Individuals with Disabilities Education Act are dismissed as outside the jurisdiction of the hearing officer; and,
11. Petitioner's request for attorneys' fees and litigation costs are dismissed as outside the jurisdiction of the hearing officer.

All other relief not specifically stated herein is **DENIED**.

SIGNED August 15, 2017.


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

XI. NOTICE TO THE PARTIES

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

¹⁴⁶ The target date for *** shall be no later than the last day of school of the fall semester of 2017 but may be sooner as recommended by *** in consultation with the school district.