

DOCKET NO. 219-SE-0415

STUDENT,	§	BEFORE A SPECIAL EDUCATION
b/n/f/ PARENT and PARENT,	§	
Petitioner	§	
v.	§	HEARING OFFICER FOR
HIGHLAND PARK INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner, *** (Student), by next friends *** (Mother) and *** *** (***/ Father)¹ (collectively, Petitioner) requested an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), with such request (the Complaint) being received by the Texas Education Agency (Agency) on April 13, 2015, and assigned to this Hearing Officer on January 21, 2016.² The Respondent to the complaint is the Highland Park Independent School District (District). Petitioner alleges the District deprived Student of a Free Appropriate Public Education (FAPE) by: (1) failing to keep Student physically safe which resulted in a series of *** injuries while at school; (2) failing to devise and implement an appropriate Individualized Educational Program (IEP) tailored to Student's unique needs causing a regression in skills; (3) failing to place Student in the least restrictive environment (LRE); (4) failing to collaborate with Student's parents (Parents); and (5) withholding information from Parents and making misrepresentations thus extending the Texas one-year statute of limitations (SOL). The District denied Petitioner's allegations. The Hearing Officer finds that the District did not violate the IDEA, as alleged. Therefore, Petitioner's requested relief is **DENIED**.

The District filed a timely counterclaim in response to Petitioner's request for an independent educational evaluation (IEE) and seeks a finding that the District's full and

¹ *** (***) ***, *** was joined as a party in Order No. 6 issued on February 9, 2016, in response to the District's motion seeking joinder.

² The third Hearing Officer assigned to preside over this case.

individual evaluation (FIE) was appropriate. As discussed in the findings of fact below, the District met its burden of showing that the District's FIE was conducted appropriately; therefore, the District's counterclaim is **GRANTED**.

I. ISSUES, PROPOSED RELIEF, AND BURDEN OF PROOF

A. Issues:

The issues before the Hearing Officer were identified in an un-numbered order issued on May 8, 2015, following the initial prehearing conference.³ The order noted that during the prehearing conference, Petitioner acknowledged that the Complaint filed on April 13, 2015, consisted of a complete statement of the issues in this case. In the Complaint Petitioner alleged that the District denied Student a FAPE and raised the issues set out below.

1. Since ***, Student has suffered a series of injuries, neglect, and inhumane and/or unsafe handling while under the care of the District. Failing to ensure the basic physical safety and dignity of Student resulted in a denial of a FAPE.
2. The District has failed to devise an appropriate IEP for Student tailored to Student's individual needs resulting in a severe regression in skills (*i.e.* communication, ***, and ***).
3. The District has failed to provide Student instruction in the LRE.
4. The District has failed to collaborate with Parents.
5. The District intentionally withheld information from, and made misrepresentations to, Parents concerning the injuries Student suffered at school.
6. Due to the District's intentional withholding of information and misrepresentations, the 19 Texas Administrative Code § 89.1151(d)(1)-(2) exceptions to the one-year SOL apply and extend the SOL.

B. Proposed Remedies

³ See 19 Tex. Admin. Code § 89.1185(e)(2).

1. An order that the District hire a one-on-one aide who is privately trained to meet Student's needs.
2. That the District provide at public expense a "School Intervenor"⁴ approved by Parents.
3. An IEE in all areas of suspected disability and need.
4. Full rights of access to and observation of Student in the District classrooms by professionals selected by Parents.
5. Training to be administered to all District staff for the safety measures to be implemented for Student's protection.
6. That the District devise a program to ensure appropriate inclusion of Student with Student's peer group.
7. The District purchase appropriately-sized support *** (*i.e.* *** fitted for *** versus *** fitted for ***).
8. Reimbursement for the unilateral private placement of Student at *** (a private school).
9. Any other equitable relief Petitioner may be entitled to receive.

C. Burden of Proof

The IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.⁵ Petitioner must, therefore, establish that (1) the alleged injuries, neglect, and inhumane and/or unsafe handling while under the care of the District resulted in a denial of FAPE; (2) the District failed to devise an appropriate IEP for Student tailored to Student's individual needs; (3) the District did not provide Student instruction in the LRE; (4) the District did not collaborate

⁴ According to Petitioner, an intervenor is:

I think that the best place for [Student] is in the public school system, and I wanted an intervenor because an intervenor is supposed to be the person who can advocate and give the disabled person the voice and could report back to me if anything happened. If Student was hurt in any way or if [Student's] IEP wasn't being implemented, I would have some more clarity and more transparency within the school system if an intervenor was in place. PHC Tr. of May 6, 2016, at 178.

Prior to the due process hearing, Petitioner abandoned Petitioner's request for an Intervenor. PHC Tr. of May 6, 2016, at 178.

⁵ *Schaffer ex rel. v. West*, 546 US 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005), *see also White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. V. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

with Student's parent; and (5) the District intentionally withheld information from, and/or made misrepresentations to, Student's parents concerning the injuries Student suffered at school.

The District had the burden of proving by a preponderance of the evidence its counterclaim that its FIE was appropriate and an IEE at public expense is not warranted.

D. Statute of Limitations

Under the IDEA, a request for a special education due process hearing must be timely.⁶ The IDEA states that a party may request a special education due process hearing either within two years of when they knew or should have known about the alleged action that serves as the basis for the due process complaint, or within an explicit period established in state law.⁷ Texas has chosen to establish a different limitations period and has fixed the period by rule at one year.⁸ Specifically, the Agency rule states: "A parent or public education agency must request a hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the request."⁹

On April 23, 2015, the District filed a motion to dismiss any claim arising after April 10, 2014, as being time barred and outside of the Texas one-year SOL. The motion was erroneously granted on February 10, 2016. However, Petitioner sought reconsideration, requesting a deferral of a ruling on whether the SOL should apply until after the presentation of evidence at the hearing. Petitioner's motion for reconsideration was granted on February 25, 2016.¹⁰

⁶ 20 U.S.C. § 1415(b)(6)(B), (f)(3)(C) (2012).

⁷ The IDEA does specify two separate exceptions to the SOL. *See* 20 U.S.C. § 1415(f)(3)(D).

⁸ 19 Tex. Admin. Code § 89.1151(c).

⁹ 19 Tex. Admin. Code § 89.1151(c).

¹⁰ Order No. 7.

On July 31, 2015, the District filed a motion seeking partial summary disposition for all claims outside of the Texas one-year SOL.¹¹ In response, Petitioner argued in Petitioner's original petition and during the May 6, 2016 prehearing conference that the Agency's rules recognize two exceptions to the SOL and both of these exceptions apply to this case:¹² The Agency's SOL rule states:

- (d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:
 - (1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the due process complaint; or
 - (2) the public education agency's withholding of information from the parent that was required by 34 CFR, § 300.1, *et seq.* to be provided to the parent.¹³

The record is replete with examples and evidence of the extraordinary efforts the District undertook to collaborate and communicate with Parents. These efforts included staff members making evening home visits. Petitioner failed to meet Petitioner's burden to show that either of the Section 89.1151(d) SOL exceptions apply to this case; consequently, all claims arising before ***, are time barred. The record contains insufficient evidence that either exception to the one year SOL applies. Other than the pleadings and the arguments of counsel, there is insufficient evidence to support an exception to the SOL; consequently, the District's motion to dismiss all claims arising before ***, is **GRANTED**.

II. HEARING AND EXTENSION OF THE DECISION DUE DATE

The hearing was held on May 9-11, 2016, before Hearing Officer David A. Berger, at the District's Highland Park High School, 4220 Emerson, Dallas, Texas. Attorney Mark Whitburn represented Petitioner. Attorney Nona Matthews appeared as counsel representing the District.

¹¹ 19 Tex. Admin. Code § 89.1151(c)-(d).

¹² Complaint at 15.

¹³ 20 U.S.C. § 1415(f)(3)(C)-(D); 34 C.F.R. § 300.511(e).

At the conclusion of the hearing, both Parties asked for the opportunity to submit written closing arguments. At the request of the Parties, the decision due was extended on the record, for good cause, to July 29, 2016,¹⁴ to allow time for preparation of the hearing transcript and for the parties to submit written briefing. This decision is timely and rendered to the Parties on July 19, 2016.

III. FINDINGS OF FACT

Based upon the evidence and argument of the Parties, the Hearing Officer makes the following findings of fact:

1. Student initially became eligible to receive services under the IDEA in *** while attending *** grade at *** within the ***, *** (***), for “Multiple Disabilities” and received services for occupational, speech, physical, language, and *** from ***.¹⁵
2. Student, a minor, resides with Mother within the geographical boundaries of the District.
3. Student began attending District schools in ***, as a *** grader at ***.
4. The District performed a Full and Individual Evaluation (FIE) that was conducted *** through ***. The *** FIE determined that Student was *** and suffers from multiple disabilities including physical *** impairments. Specifically, Student has been assessed and determined to have an intellectual disability, ***_***, speech impairment, ***,¹⁶ and ***.¹⁷ Additionally, the *** FIE determined Student has Other Health Impairment, specifically *** (***).¹⁸
5. Beginning in the *** schoolyear, Student attended ***, another school in the District.¹⁹
6. Student stopped attending *** in *** or *** after Student’s parents unilaterally withdrew Student from the District and privately placed Student at ***.²⁰

¹⁴ Tr. at 1077-79.

¹⁵ PE-11 at 1.

¹⁶ See generally ***, *** (last visited May 25, 2016):
***.

¹⁷ See generally ***, *** (last visited May 26, 2016).

¹⁸ PE 2 at 1-3, 16.

¹⁹ Tr. at 45.

²⁰ Tr. at 153; PE 29 (reflecting enrollment at *** on ***).

- 7. *** is a *** private school located in ***. The school serves special education students with moderate to severe developmental disabilities including mental retardation, PDD/Autism, traumatic brain injuries and neurological disorders.²¹
- 8. Parents seek reimbursement of tuition costs at ***. Annual tuition at *** is ***. Student's parents have paid *** in tuition to *** since ***.²²
- 9. Parents also seek an additional \$371,296.25 to reimburse costs associated with hiring private para-professionals and allied health specialists to assist Student since Student began attending ***.

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- 10. The following table reflects the providers and total invoiced amounts (less attorney's fees) of \$412,477.25 that Parents seek to have reimbursed:²³

Provider	Amount
_	***
*** tuition	***
***	***
***, PT	***
***	***
***	***
***	***
***	***
***, OT	***
***	***
***, SP	***
_	***
***	***
***	***

²¹ RE-52.
²² PE-29 at 1-4.
²³ PE-28, 28A, 30-35.

***	***
***	***
_	***
***	***
***	***
***	***
***	***
***	***
***	***
***	***
Total Reimbursement Requested:	\$412,477.25

Alleged Injuries, Neglect, and Inhumane Treatment (Most Prior to *)²⁴**

11. Petitioner’s Complaint contends that in *** the District neglected and treated Student inhumanely by allowing Student to *** (***) incident) throughout a particular school day and the District failed to notify Parents of the incident.
12. At the time of the *** incident, Student was *** and was ***. Some of Student’s ***. During the *** incident, Student had an ***. School personnel notified Parents and asked if they wanted to pick up Student from school and they declined. District personnel *** Student, had Student seen by the school nurse, ***, gave Student a ***, and *** Student’s *** as best as possible, *** ***_***.²⁵
13. On ***, while Student was working with a District occupational therapist and an assistant, Student ***.²⁶
14. ***.²⁷
15. ***.²⁸
16. When Student ***, the occupational therapist was sitting next to Student ***.
17. Student *** ***.²⁹

²⁴ The incidents and events addressed in this subsection all occurred outside the Texas one-year SOL and are time barred. These incidents are discussed for context and because they were pled in Petitioner’s Complaint.

²⁵ Tr. at 756-58.

²⁶ Tr. at 848-49.

²⁷ Tr. at 848.

²⁸ Tr. at 846-47. *See also* *** (last visited June 10, 2016):

***. *Id.*

²⁹ Tr. at 798.

18. The District never received a request for information from Student's parents concerning the *** on ***. The District did not fail to respond to a request for information.³⁰
19. After Student *** on ***, the District implemented a protocol that required a service provider and an instructional assistant or teacher to be with Student during occupational therapy conducted with Student ***.³¹
20. On ***, Student *** while left unattended. *** an Admissions, Review and Dismissal (ARD) committee meeting while Mother was on school property and the ARD Committee was addressing safety issues raised by Parents.³²
21. During the ARD committee meeting of ***, the committee members ***. The meeting was recessed ***. Student was located at the school ***. The principal and Student's aide were present.
22. The aide explained that he was *** and turned away *** and "[Student] ***." The aide stated, "Well, I walked away from [Student] ***."³³
23. The school nurse's note documenting the *** *** states, "Student suffered *** and did not appear to be in distress. The ***, and Parents were notified."³⁴
24. ***.³⁵
25. Parents immediately questioned the principal on how Student *** and why ***; they requested a "root cause" analysis of the incident and additional staff training.³⁶ The principal assured Parents that he would investigate and take the steps Parents requested. On ***, the principal emailed Parents a new *** that expressly directed "****, and never leaving a student unattended ***."³⁷
26. As a result of the *** ***, the District hired additional staff to ensure Student received one-on-one care.³⁸

³⁰ Tr. at 761-62.

³¹ Tr. at 799.

³² RE-7 at 6 (ARD committee meeting minutes): "Mom shared that her concern arose after an injury at school when Student ***."

³³ Tr. at 104.

³⁴ PE-18 at 5.

³⁵ Tr. at 482-83.

³⁶ Tr. at 106.

³⁷ PE-23 at 59-60.

³⁸ Tr. at 109.

27. On ***, Mother notified the District that she was concerned Student was *** ***, ***.³⁹ On ***, Dr. ***, Student's pediatrician, notified the District that she had examined Student and Student had *** "****." Dr. *** opined that she was "confident *** has developed from [Student's] ***." Dr. *** recommended *** Student from *** throughout the school day.⁴⁰
28. On ***, a District employee acknowledged receipt of Dr. ***' correspondence and replied. The District's reply stated the District's physical therapist (trained in ***) had been consulted and an aggressive *** schedule was devised and implemented.⁴¹ The *** schedule included *** of Student throughout the school day and frequent *** by the school nurse.⁴²
29. In response to Dr. ***' *** concerns, the District contacted ***, the *** used by Parents to provide Student's *****.⁴³
30. ***. ***.⁴⁴ The *** revealed that Student was ***. In response, the District ***.⁴⁵
31. The District monitored employee compliance with the *** schedule through Student's daily activity log.⁴⁶
32. The *** of Student's *** revealed that Student's *** was not caused by the use of ***, ***. When notified of the situation, the District promptly investigated and determined the cause of *** and implemented an immediate plan to alleviate Student's ***.
33. Petitioner alleges that the District had the school nurse *** and that Parents did not consent to ***, and *** were "****" for Student.⁴⁷
34. School nurses are required to assist in the determination of the healthcare needs of clients and must, among other things, utilize a systematic approach to provide individualized, goal-directed nursing care by: (i) performing comprehensive nursing assessments (which

³⁹ PE-23 at 1-9.

⁴⁰ PE-23 at 10.

⁴¹ PE-23 at 11; Tr. at 852-54.

⁴² PE-23 at 12; Tr. at 854.

⁴³ Tr. at 852-54.

⁴⁴ Tr. at 854.

⁴⁵ Tr. at 854.

⁴⁶ Tr. at 856.

⁴⁷ Tr. at 71. *See* 153 Tex. Admin. Code § 1022(a)(1)(D):

A school nurse is an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

- would include a physical examination to be comprehensive); (ii) making nursing diagnoses that serve as the basis for the strategy of care; (iii) developing a plan of care based on the assessment and nursing diagnosis; (iv) implementing nursing care; and (v) evaluating the client's responses to nursing interventions.⁴⁸
35. On ***, the school nurse documented that Student "****." The District never notified Parents of this injury/incident.⁴⁹
36. On ***, Student suffered injury when Student *** (*** incident) during a *** session.⁵⁰
37. At the time of the *** incident Student was ***.⁵¹ Student's speech therapist was *** in front of Student and Student's ***, ***, ***, ***.⁵² The school nurse was notified and the nurse ***. Student initially cried when Student *** but quickly calmed after ***.⁵³
38. On the *** Student appeared to be in pain.⁵⁴
39. In response to the *** *** incident, Mother requested a formal incident report. The District did not provide an incident report or school nurse's notes until responding to a discovery request for the due process hearing (DPH) stating the software containing the nurse's notes is "unable to cut and paste" to make the information available to Mother.⁵⁵
40. On ***, while at *** (another school within the District) during the summer transition between *** and ***, Petitioner was allowed to *** while working on *** with the *** ***, ***.⁵⁶
41. *** ***.⁵⁷
42. The District did not notify Parents of the *** ***. A private care provider hired by Mother reported the incident to Parents.⁵⁸
43. Parents requested a meeting with Dr. ***, the District's Director of Summer Programs, to discuss the ***. The meeting occurred on ***. During the meeting, Mother requested a

⁴⁸ 22 Tex. Admin. Code § 217.11.

⁴⁹ PE-18 at 9; Tr. at 90.

⁵⁰ Tr. at 50, 92, 769, 946, and 950.

⁵¹ Tr. at 82-83; *See e.g.* **** (last visited May 31, 2016).

⁵² Tr. at 702-05; PE-35 at 5-12 (photographs of injury).

⁵³ PE-23 at 57.

⁵⁴ Tr. at 84.

⁵⁵ Tr. at 90; PE-23 at 58.

⁵⁶ Tr. at 110-11.

⁵⁷ Tr. at 111; PE-35 at 19-28 (photographs documenting ***).

⁵⁸ Tr. at 114.

copy of the incident report and was told it would only be made available if there was a physician's note documenting the injury and Parents turned over Student's full medical record. Mother stated there was a physician's note documenting the injury and insisted on disclosure. Mother was told the report would not be available until some undisclosed future time after the school nurse returned to work.⁵⁹

44. On ***, ***,⁶⁰ ***, *** (emphasis added).⁶¹
45. Despite ***, the *** principal testified, "The *** came to school and did their investigation, and then determined that [Student] was not in any--in any harm."⁶²
46. At the time of the ***, the District had already implemented staff safety training for all employees who had direct contact with Student and involved *** used by Student.⁶³
47. On ***, Student was ***. There were two District employees with Student at the time working on an unspecified IEP goal. The employees turned away from Student to get supplies and Student ***, ***. Student was taken to the school nurse who determined Student suffered ***. The nurse notified Mother.⁶⁴
48. As a result of the ***, the District implemented a revised safety protocol for Student requiring two people to attend Student when Student was ***. One person was to be responsible for Student's physical safety and the other person was to be in charge of presenting educational materials to Student.⁶⁵
49. The Complaint alleges that in a training session prior to the *** schoolyear, and throughout that year, District employees placed Student in a "****" to facilitate ***. The Complaint describes a *** as, "****."⁶⁶ The record contains no evidence that the term "****" was ever used by the District.
50. Student's *** were appropriately accomplished by using the following technique: (1) ***; (2) ***; (3) ***; and (4) ***.⁶⁷

⁵⁹ Tr. at 116.

⁶⁰ PE-24 at 35-45.

⁶¹ PE-24 at 45.

⁶² Tr. at 785.

⁶³ Tr. at 955.

⁶⁴ Tr. at 905-06; PE-19.

⁶⁵ Tr. at 907-08.

⁶⁶ Complaint at 8-9.

⁶⁷ Tr. at 890-94.

51. The Complaint further alleges that during the staff training prior to the *** schoolyear, the District *** despite Mother's warning of the inherent risk of injury to Student. The ***. The ***, " (i.e. ***) ***. ⁶⁸
52. ***. ⁶⁹
53. ***. The District used ***. ⁷⁰
54. The *** by the District prior to the start of the *** schoolyear and during that *** was not inherently dangerous.
55. The Complaint alleges that during the *** schoolyear, District employees repeatedly would *** and caused Student to ***. ⁷¹
56. Beginning in ***, the District employed various methods of *** in effort to achieve Student's *** goals. These methods included:
- ***: ***. ***.
 - ***: ***, ***.
 - ***: ***.
 - ***: ***. ⁷²
57. During the *** schoolyear, Mother worked closely with District personnel to ***. ⁷³
58. Several methods of *** were tried: ***. ⁷⁴
59. Mother and District personnel eventually agreed that *** was easiest and best for Student, and was the most secure method of ***. ⁷⁵
60. Student never ***. ⁷⁶

⁶⁸ Tr. at 897-98.

⁶⁹ Tr. at 898.

⁷⁰ Tr. at 898.

⁷¹ Complaint at 8; Tr. at 141, 871; PE-25 at 3.

⁷² PE-25 at 3.

⁷³ Tr. at 870.

⁷⁴ Tr. at 870-71.

⁷⁵ Tr. at 871.

⁷⁶ Tr. at 874.

61. During all attempts at ***, Student's *** and Student was not caused distress.⁷⁷
62. The Complaint alleges that in ***, District employees *** for a substantial period of time, ignoring Student's obvious discomfort and pain.
63. In ***, Student did Student's *** during the last class period. Staff had instructions to ***. Pursuant to training provided to District personnel by Student's private physical therapist, the *** were always *** after such activity to ***.⁷⁸
64. On an unspecified day in ***, the District was notified via email that Student ***. The next day, District personnel ***, *** and none was observed.⁷⁹
65. Student was *** on one day in ***. Student did not suffer any injury as the result of Student's *** ***.

Regression

66. The Complaint alleges that Student suffered severe regression in the areas of communication, assistive technology, ***, understanding ***, occupational therapy goals, and *** during Student's time at the District, and that the regression was reversed only when Student was privately placed at *** and began receiving necessary and supplemental services.
67. On ***, during an ARD committee meeting the District conceded there had been regression during the previous schoolyear in the area of communication assistive technology. The District attributed the regression to "human error in data collection."⁸⁰ The human error causing Student's regression was identified and documented on ***; it took the District a year to disclose the regression and offer compensatory services.

⁷⁷ Tr. at 874-75.

⁷⁸ Tr. at 920.

⁷⁹ Tr. at 921.

⁸⁰ See Tr. at 382-83, 700-01; PE-22 at 2, 4 (Individualized Goals and Objectives and Progress Report of ***, documenting human error in data collection of specified benchmarks and short-term objectives of understanding ***); PE-15 at 99-100:

The committee was asked what compensatory services are appropriate in order to make up for the harmful effects [of the regression]. Mrs. ***, District assistive technology representative, shared that meeting monthly to discuss how [Student] is doing and then coming to *** [***] and spend additional time working with [Student] and staff—modeling what to use the ***, etc. Mom shared that she is in agreement and Dad shared that this is what they have been asking for all along and he agrees that it is important. *Mrs. *** shared that a significant amount of training needs to be done to bring [Student] back to where Student was reported to be [while attending ***], to include *** [emphasis added].*

68. The data presented on ***, indicated Petitioner's progress varied a great deal from one grading period to another.⁸¹ District staff recognized and explained that the appearance of regression in the data was in large part due to human error.⁸² Specifically, a lack of operational definitions led to subjective and inconsistent data collection and, therefore, unreliable data.⁸³
69. The data collection errors were chiefly attributed to Student's primary teacher who resigned from the District shortly after the errors were discovered.⁸⁴
70. On ***, Father emailed the District and requested compensatory services and accommodations to address the regression.⁸⁵
71. One of the compensatory services that the Parties agreed to pursue was a District referral to the *** (***) for admission as a ***.⁸⁶ On ***, *** rejected Student's admission application stating, "Our review of [Student's] educational records and other information led us to conclude that Student is currently receiving a Free and Appropriate Public Education from your district...."⁸⁷
72. *** agreed to provide Student and District with consulting services that included site visits to the school, consultation with District staff, devising a plan of action, and home visits.⁸⁸
73. *** consultations and assessments were adequate compensation for Student's regression.
74. After observation and evaluation, *** made two primary recommendations: Student should receive more active and independent engagement with Student's environment and more *** training and services.⁸⁹
75. *** also recommended that District staff refrain from *** while trying to *** Student and that District staff slow their presentation of information to accommodate Student's delays in processing information.⁹⁰

⁸¹ RE-6 at 100-01.

⁸² RE-6 at 100.

⁸³ Tr. at 768-69.

⁸⁴ Tr. at 384, 476, 700, 767-68; PE-15 at 105.

⁸⁵ Tr. at 395-96; PE-15 at 122.

⁸⁶ Tr. at 477-81.

⁸⁷ RE-9 at 1.

⁸⁸ PE-12 at 36; PE-16 at 31; PE-19 at 36; PE-20 at 36; PE-22 at 36; PE-23 at 36.

⁸⁹ PE-16 at 3.

⁹⁰ PE-16 at 3; Tr. at 501-02, 505.

76. The *** site visits revealed that Student's classroom environment had too many distractions, and was too visually cluttered and complex.⁹¹
77. Based upon observations made during an *** site visit, *** devised and submitted an Action Plan to address the areas of identified need.⁹²
78. The District agreed to implement the *** recommendations.⁹³
79. At a *** ARD meeting, Parents expressed concern that the *** Action Plan was not being implemented. Specifically, they noted that the recommended communication device was not being used and Student was not being given sufficient wait time to process information.⁹⁴
80. *** returned to observe Student on ***, and noted that Student was having difficulty with *** and recommended utilizing *** instead of ***.
81. Petitioner asserts that moving to the less complex use of *** versus the use of *** and *** was a true regression.⁹⁵ Parents emphasized that ***, *** IEP documentation of ***, noted that "[Student] can *** and in order to request ***."⁹⁶
82. In ***, *** noted that Student was not making sufficient progress using recommended active learning techniques resulting in Student not having a "great number of preferred activities or objects."⁹⁷ Insufficient preferred activities and objects "makes it difficult to provide [Student] routines that are motivating for [Student]."⁹⁸
83. *** also stressed that the number of academic goals for Student needed to be reduced.⁹⁹

⁹¹ PE-16 at 4-5; Tr. at 504-05:

So you need to reduce the amount of background information, and, you know, present it against a background that doesn't have a lot of things going on.

And related to that is also just general environment information. Not just visual but also coming from other sensory areas: noise, smells, vibrations, you know, whatever.

⁹² RE-12 at 8.

⁹³ Tr. at 513.

⁹⁴ PE-9 at 135.

⁹⁵ Petitioner's Closing Brief (PB) at 21.

⁹⁶ PE-11 at 21.

⁹⁷ Tr. at 570.

⁹⁸ Tr. at 570; PE-16 at 22:

Several staff members noted [Student] does not have a great number of preferred activities and objects. This makes it difficult to design routines that are motivating for [Student]. It is possible that [Student] has not had sufficient exposure to "active learning" experiences and this could be a major factor in [Student's] behavior.

⁹⁹ PE-16 at 30 (noting Student had *** goals and objectives); Tr. at 566-71.

84. Petitioner asserts that Student suffered regression from the District's attempt to lower goals, expectations, and reduce services after the District conceded its data collection errors and authorized compensatory services.¹⁰⁰
85. The allegation that Student experienced academic regression from adjusted IEP goals and expectations is not supported by the evidence. As far as academic benefit, IEP Progress Reports dated ***, indicated Student made "some progress" or "no progress" on academic-related IEP objectives including answering ***,¹⁰¹ identifying *** (comments indicate Student can identify *** Student already has learned);¹⁰² and *** *** (comments indicate Student continues to need *** along with wait time to complete the *** task).¹⁰³ Student's extended school year (ESY) Progress Report dated ***, demonstrated "some progress" on answering *** (comments indicate inconsistency between ***).¹⁰⁴ Based on Student's minimal progress, the ***, IEP either discontinued or decreased expectations for mastery on all academic-related IEP objectives.¹⁰⁵ Answering *** and identifying *** were discontinued.¹⁰⁶ The mastery criterion for sight word vocabulary decreased from *** new words to *** and added a condition limiting options to "****".¹⁰⁷ The condition limiting options to "****" was also added to the objectives related to identifying ***, ***, and identifying ***.¹⁰⁸ Essentially, Petitioner had a *** of making the correct choice whether Student understood the vocabulary or concept.
86. In Student's previous district, Student failed to make progress on academic goals and objectives requiring identification ***¹⁰⁹ resulting in discontinuation of objectives, a decrease in mastery level, and/or the addition of a condition limiting options to *** choices.¹¹⁰ In contrast, as of ***, in Highland Park ISD Student was identifying ***¹¹¹ and the *** with 75% accuracy.¹¹² Based on this progress, the ARD committee implemented a goal for Student to follow a ***. In Student's previous district, Student demonstrated "some progress" on answering ***, but that objective was discontinued

¹⁰⁰ PB at 10.

¹⁰¹ RE-3 at 1; PE-11 at 9.

¹⁰² RE-3 at 2; PE-11 at 11.

¹⁰³ RE-3 at 2; PE-11 at 11.

¹⁰⁴ PE-11 at 8.

¹⁰⁵ RE-3 at 1-2; PE-11 at 9, 11.

¹⁰⁶ RE-3 at 1; PE-11 at 9.

¹⁰⁷ PE-11 at 21.

¹⁰⁸ PE-11 at 22.

¹⁰⁹ RE-3 at 1-2; PE-11 at 9, 11.

¹¹⁰ PE-11 at 21-22.

¹¹¹ RE-26 at 2.

¹¹² RE-26 at 4.

without mastery.¹¹³ Student's *** FIE indicates Student was able to answer *** using *** (***) device.¹¹⁴ As of ***, Student could also answer *** with 63% accuracy, *** with 69% accuracy, and *** with 61% accuracy.¹¹⁵ Student's new goal was to answer *** questions with 70% accuracy when given *** choices.¹¹⁶ In Student's previous district, Student required *** to ***.¹¹⁷ The *** IEP included a *** goal from *** choices requiring 80% mastery.¹¹⁸ Careful consideration of the documentary evidence shows Student made academic progress while in the District.

87. Student alleged regression in communication because during the first *** of attendance in District schools, the District's assistive technology specialist refused to use ***¹¹⁹ that Student had used in the ***.¹²⁰
88. Student's alleged regression in communication is not supported by the evidence.¹²¹ Student's previous district reported Student's IEP progress and present levels in four formats prior to Student's withdrawal.¹²² Student's Speech/Language Update dated ***, indicated Student demonstrated inconsistent progress in development of receptive language and negligible progress in development of speech.¹²³ IEP Progress Reports dated ***, indicate that after *** grading periods, Petitioner made "no progress"¹²⁴ on seven of eight communication-related IEP objectives including using *** to communicate needs, ***, ***,¹²⁵ ***,¹²⁶ and ***.¹²⁷ No data was included with the ratings.¹²⁸ After Student made "no progress" using *** to communicate, the ***, IEP changed the following goals and objectives: (1) the annual goal removed the focus on

¹¹³ RE-3 at 1; PE-11 at 9.

¹¹⁴ RE-24 at 4.

¹¹⁵ RE-26 at 2.

¹¹⁶ RE-26 at 13.

¹¹⁷ RE-3 at 2; PE-11 at 11.

¹¹⁸ PE-26 at 17.

¹¹⁹ *** ***. *** (last visited June 23, 2016).

¹²⁰ PB at 5.

¹²¹ Complaint at 11-12.

¹²² At the end of the *** schoolyear, Student's previous district summarized Student's progress in related and instructional service update summaries and in an IEP Progress Report. Student attended ESY during the summer of ***, and Student's previous district summarized Student's maintenance of skills in an ESY Progress Report. *See* PE-11 at 7-8. On ***, Student's previous district developed the IEP in effect upon Student's transfer to the District in ***. PE-11 at 18-41.

¹²³ PE-11 at 2.

¹²⁴ The legend for the progress report rating scale is found at the bottom of RE-3 at 1.

¹²⁵ RE-3 at 4; PE-11 at 13.

¹²⁶ RE-3 at 3; PE-11 at 12.

¹²⁷ RE-3 at 4; PE-11 at 12.

¹²⁸ RE-3 at 3-4; PE-11 at 12-13.

using ***¹²⁹ and focused instead on decreasing the *** “in hopes that one day Student can transfer this skill to ***;”¹³⁰ (2) discontinued the objective “***;”¹³¹ (3) incorporated the un-mastered skill of using *** to communicate needs into three objectives related to gradually decreasing the *** options;¹³² and (4) changed the mastery criterion for using *** to *** from 3 out of 5 opportunities daily to 85% over one week.¹³³ The following IEP objectives were discontinued without mastery: (1) using a *** to request ***; and (2) *** items by at least *** categories.¹³⁴ The expectations decreased from *** to *** items from Student’s environment and *** items from the curriculum ***.¹³⁵

89. Contrary to Student’s allegations of regression in communication, during Student’s time in the District, Student made significant progress. Student’s ***, FIE indicates Student used *** to answer *** using ***;¹³⁶ identified Student’s ***.¹³⁷ More specifically, Student’s IEP progress report dated ***, notes when presented with *** options, Student identified *** 71% of the time.¹³⁸ As of ***, Student could use Student’s *** to *** from familiar terms.¹³⁹ Student’s new *** included an objective that required that Student first *** and then select *** out of *** choices with prompts,¹⁴⁰ and to communicate needs from *** choices at 70% accuracy.¹⁴¹ Additionally, Student’s new goals required Student to generalize the ***** to a variety of devices such as ***.¹⁴²
90. Student also alleges regression in ***. Student reports that while attending school in Student’s previous district, Student used Student’s *** “within good time with reinforcements.” Student alleges in ***, Student could only ***. Student also bases alleged regression on the District’s alleged failure to purchase and replace ***, knowingly using ***, and that the District continued using the *** while assuring Mother *** was being used.¹⁴³ However, the evidence does not support Student’s allegations.

¹²⁹ RE-3 at 4; PE-11 at 13.

¹³⁰ PE-11 at 24.

¹³¹ RE-3 at 4-5; PE-11 at 13-14, 24-25.

¹³² RE-3 at 4-5; PE-11 at 13-14, 24-25.

¹³³ RE-3 at 4; PE-11 at 13, 25.

¹³⁴ RE-3 at 3; PE-11 at 12, 23.

¹³⁵ RE-3 at 3; PE-11 at 12, 23.

¹³⁶ RE-24 at 4.

¹³⁷ RE-24 at 4.

¹³⁸ RE-16 at 8.

¹³⁹ RE-26 at 2.

¹⁴⁰ RE-26 at 15.

¹⁴¹ RE-26 at 21.

¹⁴² RE-26 at 22.

¹⁴³ Complaint at 12-13.

91. In Student's previous district, Student's physical therapy (PT) update dated ***, and IEP Progress Report dated ***, indicated Student made "sufficient progress" on *** while ***,¹⁴⁴ *** on the ***, and returning to ***.¹⁴⁵ While ***, Student made "sufficient progress" maintaining *** with ***.¹⁴⁶ Again, no data was included with the ratings.¹⁴⁷ While using ***, Student was able to *** with minimal prompting.¹⁴⁸ When ***, Student demonstrated *** through Student's ***.¹⁴⁹ The ESY Progress Report dated ***, indicated regression in that Student was only able to ***.¹⁵⁰ In Student's *** IEP, Student's present levels of academic achievement and functional performance (PLAAFP) again indicated regression stating Student could ***.¹⁵¹ Student's present levels indicated Student could *** "within good time with reinforcements." The ARD committee drafted a goal to ***.¹⁵²
92. Petitioner accurately reports the PLAAFP in Student's previous district as using a *** "within good time with reinforcements." However, Student's *** IEP actually reports Student *** as reported by Petitioner.¹⁵³ As of ***, Student's PLAAFPs indicated significant progress in *** during Student's enrollment in the District. As of ***, Student could *** and was attempting to *** if needed when Student ***.¹⁵⁴ As of ***, Student could ***.¹⁵⁵ The *** before enrolling in the District, Student could ***.¹⁵⁶ As of ***, Student could *** (***) ***.¹⁵⁷
93. Petitioner also bases alleged regression on the District's alleged failure to purchase and replace ***.¹⁵⁸ The District *** for Student on ***.¹⁵⁹ The *** arrived on ***.¹⁶⁰ The District's physical therapist (PT) set up *** for Student on ***, and sent Parents the

¹⁴⁴ PE-11 at 3. *** (last visited June 22, 2016).

¹⁴⁵ RE-3 at 8; PE-11 at 17.

¹⁴⁶ RE-3 at 8; PE-11 at 17.

¹⁴⁷ RE-3 at 8; PE-11 at 17.

¹⁴⁸ PE-11 at 3.

¹⁴⁹ PE-11 at 3.

¹⁵⁰ PE-11 at 7.

¹⁵¹ PE-11 at 28.

¹⁵² PE-11 at 29.

¹⁵³ RE-13 at 19.

¹⁵⁴ RE-13 at 19.

¹⁵⁵ RE-26 at 5.

¹⁵⁶ PE-11 at 28.

¹⁵⁷ RE-26 at 5.

¹⁵⁸ Complaint at 12-13.

¹⁵⁹ RE-39 at 1.

¹⁶⁰ RE-39 at 1.

***.¹⁶¹ On ***, the District's PT emailed Mother about ***.¹⁶² When Student's ***, the District's PT contacted the ***, pursuant to Mother's request.¹⁶³ On ***, Mother notified the District's PT she would be sending Student's *** asked about ***.¹⁶⁴ The District's PT informed her it was *** because the District has not used *** and no one from the family had ***.¹⁶⁵ On ***, the District PT set up a time with ***, Student's home caregiver,¹⁶⁶ for her to *** at *** to include: ***. After letting Mother know Student had ***, Mother said to let another student use it.¹⁶⁷ At the end of the *** schoolyear, District *** purchased specifically for Student's use included ***, ***.¹⁶⁸

94. Mother informed District personnel that Student's private therapist recommended a ***.¹⁶⁹ Therefore, Mother wanted the District to order one.¹⁷⁰ Mother stated the current *** had recently been *** *** and she would send it to school until the *** was ordered.¹⁷¹ Mother emailed the District's PT on ***, to confirm whether new *** would be available when Student ***. She claimed the ***.¹⁷² The District's PT responded by listing what would be available, and stated that the *** had been ordered and alternates were available if either had not arrived ***.¹⁷³
95. Student's Occupational Therapy (OT) Progress Update dated ***, indicated Student required *** assistance for all *** tasks including ***, ***, ***, ***, and ***.¹⁷⁴ The report also indicated Student had not demonstrated any ***.¹⁷⁵ An IEP Progress Report dated ***, indicates that after *** grading periods, Student either demonstrated "some progress" or "no progress" on ***-*** IEP goals and objectives.¹⁷⁶ No data was included with the ratings.¹⁷⁷ In the *** IEP, Student's objective related to *** was dropped without any indication Student had made any progress and with the last IEP progress

¹⁶¹ RE-39 at 1.

¹⁶² RE-39 at 1.

¹⁶³ RE-39 at 3.

¹⁶⁴ RE-39 at 4.

¹⁶⁵ RE-39 at 4.

¹⁶⁶ Tr. at 878.

¹⁶⁷ RE-39 at 4.

¹⁶⁸ RE-39 at 22.

¹⁶⁹ RE-39 at 4.

¹⁷⁰ RE-39 at 4.

¹⁷¹ RE-39 at 4.

¹⁷² RE-46 at 64.

¹⁷³ RE-46 at 64.

¹⁷⁴ PE-11 at 1.

¹⁷⁵ PE-11 at 1.

¹⁷⁶ RE-3 at 6-7; PE-11 at 15-16.

¹⁷⁷ RE-3 at 6-7; PE-11 at 15-16.

- report indicating “no progress.”¹⁷⁸ The remaining *** IEP objectives were carried over from the *** IEP to include the same mastery criterion of 3 out of 4 trials over 3 data collections days and the additional requirement of *** being maintained for *** rather than having no durational requirement.¹⁷⁹
96. As of ***, Student could maintain ***.¹⁸⁰ As of *** and the *** FIE, Student only required prompting/facilitation at *** then was able to bring the *** with good accuracy ***.¹⁸¹ As with other areas, Student demonstrated progress during Student’s time in the District.
97. Petitioner also alleges Student regressed in Student’s *** based on the District moving from using ***¹⁸² and an alleged decline in Student’s *** (***) range. Petitioner alleges *** in *** and *** for ***.¹⁸³
98. Student was not successful in Student’s previous district using ***. Based on Parent’s request, the previous district agreed to develop an IEP goal focused on *** “in hopes that one day Student can transfer this skill to ***.”¹⁸⁴ The necessity to ***, not that Student regressed. No data indicates Student demonstrated any success with ***. Student’s *** dated ***, does not include a ***¹⁸⁵ score reflecting a *** as alleged by Petitioner.¹⁸⁶ Student’s *** ARD committee meeting notes a *** *****¹⁸⁷ indicating ***. The *** *** Report from *** placed Student in ***.¹⁸⁸ The *** ***, as well as the *** IEP note a *** range of ***¹⁸⁹ indicating ***, and that Petitioner Student “needs to verify with additional *** (***) the *** Student *** in order to get more complete information.”¹⁹⁰ The District views these measures more as information on which to base instructional strategies and accommodations rather than indicators of IEP progress. Either way, Student did not demonstrate regression in the area of *** based on a review of the documentary evidence.

¹⁷⁸ RE-3 at 7; PE-11 at 16, 26-27.

¹⁷⁹ RE-3 at 6-7; PE-11 at 15-16, 26-27.

¹⁸⁰ RE-26 at 4.

¹⁸¹ RE-17 at 90; RE-24 at 23.

¹⁸² Complaint at 11.

¹⁸³ Complaint at 12.

¹⁸⁴ P-11 at 24.

¹⁸⁵ ***, RE-22 at 1. ***, RE-22 at 2.

¹⁸⁶ PE-11 at 4-6.

¹⁸⁷ RE-6 at 5.

¹⁸⁸ RE-22 at 2.

¹⁸⁹ RE-23 at 6; RE-26 at 5.

¹⁹⁰ RE-26 at 5-6.

Least Restrictive Environment

99. The Complaint alleges that the District placed Student in a somewhat isolated and overly restrictive environment thus violating the IDEA's LRE mandate.¹⁹¹ Essentially Petitioner argues that the District's policy of "reverse inclusion" resulted in removing Student from the general educational (inclusive) setting and the school cafeteria during lunch and placed Student in special classes and requested student volunteers to interact with Student.¹⁹² Furthermore, the Complaint alleges that Student was excluded from participating in extracurricular activities (*e.g.* ***, field trips, ***, and assemblies).¹⁹³
100. The record does not support Petitioner's LRE allegation. Principal *** testified that reverse inclusion involved general education students going into the self-contained special education classroom to eat lunch with the students in that classroom so that the students with disabilities would have the opportunity to engage in experiences with their classmates without disabilities.¹⁹⁴ Student's IEP included some instruction in the general education classroom with assistance. Principal *** testified regarding Student's interaction with typical peers in the general education classroom and ***.¹⁹⁵ He testified about Student's participation in a field trip to *** with other students and Student's participation in all school assemblies.¹⁹⁶ ***, *** Specialist, testified that he understood that Student routinely ate lunch in the cafeteria.¹⁹⁷ Mother testified incorrectly that at *** School student volunteers were brought into a closed setting to eat lunch with Student, and at *** "they actually put [Student] in a room by ***self to eat."¹⁹⁸
101. In response to Petitioner's allegation that Student was isolated from peers, Principal *** testified, "I would deny that and say that [Student], in [Student's] time at ***, was a big part of our student body, and the kids in *** grade all knew who Student was and all enjoyed being around Student and Student enjoyed being around them."¹⁹⁹
102. Student's *** IEP included placement in a special education setting for about *** of the school day, and the remaining time in the general education environment with special education support. Petitioner failed to present sufficient evidence that this educational placement was inappropriate in any way or more restrictive than what Student required to

¹⁹¹ Complaint at 13-14; Tr. at 149-50.

¹⁹² Tr. at 149-51.

¹⁹³ Complaint at 14-15; Tr. at 151.

¹⁹⁴ Tr. at 764.

¹⁹⁵ Tr. at 794-95, 821-22.

¹⁹⁶ Tr. at 795, 822, 824.

¹⁹⁷ Tr. at 531.

¹⁹⁸ Tr. at 149.

¹⁹⁹ Tr. at 824.

make progress on Student's goals and objectives. Instead, the result of the evaluations and testimony of Student's teachers supported this placement as appropriate.

Lack of Collaboration and Communication with Parents

103. The complaint alleges a lack of collaboration with Parents.²⁰⁰ Again, this allegation was not supported by the evidence. The District developed and implemented Student's IEP in a coordinated and collaborative manner by all of the key stakeholders, including teachers, evaluation personnel, speech pathologist, occupational therapist, physical therapist, adaptive PE teacher, AT specialist, music therapist, ***, behavior specialist, administrators, teacher for ***, *** outreach personnel, and Parents. Petitioner offered no evidence of any lack of coordination or collaboration in the implementation of Student's IEP.
104. The District staff who implemented Student's IEP collaborated closely with each other through team meetings²⁰¹ and with outside service providers.²⁰² In addition to the extended ARD committee meetings, District staff collaborated with Parents and considered Parents' input during monthly "collaboration meetings."²⁰³ District staff also sent draft IEP documents to Parents prior to ARD committee meetings and incorporated Parents' feedback into the IEPs.²⁰⁴
105. On *** documented occasions between *** and ***, the District's PT, ***, communicated with Parents, Parents' designated representative, other school staff working with Student, and service providers/vendors outside of the District either in person, at school, in the home, on the phone, or via email.²⁰⁵ Collaborative communications involved sharing information about Student, Student's ***, Student's progress, ***, resources for Parents, setting up appointments with vendors per Parents' request, and collaboration meetings to prepare for upcoming ARD committee meetings.²⁰⁶ On ***, based on Student's success, Parents even asked the District's PT to be Student's private therapist.²⁰⁷

²⁰⁰ Complaint at 1.

²⁰¹ RE-36 at 190; RE-37 at 1-3, 5-6; RE-39 at 1; RE-46 at 81.

²⁰² RE-39 at 1, 3-4; RE-46 at 10.

²⁰³ RE-46 at 8-9; Tr. at 763.

²⁰⁴ RE-46 at 11-32, 86-91, 99-103.

²⁰⁵ RE-39 at 1-7.

²⁰⁶ RE-39 at 1-7.

²⁰⁷ RE-39 at 3.

106. Petitioner alleges that the District refused to consider Parents' input in ARD committee meetings; however, the evidence proved otherwise, and Petitioner failed to carry Petitioner's burden on this issue. At least one of Student's Parents participated in every ARD committee meeting. The District typically scheduled the ARD committee meetings on ***, even though *** ***, in an effort to collaborate with both Parents.²⁰⁸ The District considered parental input in all ARD committee meetings resulting in meetings lasting up to several days.²⁰⁹ Parents both acknowledged their appreciation for the efforts of the District's personnel to educate Student. Both have expressed appreciation for the time the District took to address each one of their concerns and to incorporate their feedback into the IEP.²¹⁰ ARD committee meeting documents illustrate extensive Parent input and requests for consideration, which almost always resulted in that input being incorporated into Student's IEP.²¹¹ Principal *** testified that the District welcomed Parents and worked hard to collaborate with them to reach consensus in ARD committee meetings.²¹² The District willingly would send emails to up to five different email addresses in an effort to collaborate with the Parents.²¹³ The District offered Parents monthly collaboration meetings.²¹⁴ The District did not withhold any information that was requested by Parents.²¹⁵ Parents were not denied meaningful participation on the rare occasion the District staff disagreed with one of Parents. IDEA requirements with respect to parental input are met "[a]bsent any evidence of bad faith exclusion of the parents or refusal to listen or consider" parental input.²¹⁶

Statute of Limitations

107. The Complaint states that the Texas one-year SOL should not apply because the District intentionally withheld records and made misrepresentations.²¹⁷
108. The record contains no evidence that a misrepresentation or a withholding of information prevented Student from filing Student's Complaint within the regulatory timeframe. The Complaint was received by the Texas Education Agency on April 13, 2015.

Requested Remedies: Independent Educational Evaluation

²⁰⁸ Tr. at 759.

²⁰⁹ Tr. at 759.

²¹⁰ RE-6 at 99, 110; RE-26 at 55.

²¹¹ RE-6 at 99-111; RE-17 at 132-142; RE-26 at 43-55.

²¹² Tr. at 786.

²¹³ Tr. at 786-87.

²¹⁴ Tr. at 787.

²¹⁵ Tr. at 787-88.

²¹⁶ *White v. Ascension Parish*, 343 F.3d 373, at 377, 380 (5th Cir. 2003).

²¹⁷ Complaint at 15.

109. Petitioner seeks an IEE in all areas of disability and suspected need as a partial remedy.²¹⁸
110. A parent of a child with a disability has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b). The District provided sufficient evidence on its counterclaim that proved that its' FIE was appropriate such that Petitioner is not entitled to an IEE at public expense. Furthermore, Petitioner offered no evidence that Student needed an evaluation in any area not yet examined.
111. The *** FIE was conducted in Student's native language.²¹⁹ The District considered multiple sources of data in conducting the FIE.²²⁰ The District sought information from Parents; however, Mother chose to provide input for the evaluation though ***.²²¹ The assessments used in the FIE were appropriate for Student's age, were appropriate to use in the assessment of Student's disabilities, staff were trained to administer the assessments, and the assessments were administered correctly in accordance with the instructions. The assessment results were valid and reliable, and were not racially or culturally biased. The assessments were validated for the specific purpose for which they were used. Tests were selected and administered so as best to ensure the results accurately reflect Student's aptitude or achievement level. Technically sound instruments were used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The evaluation provided relevant information that directly assisted in determining Student's educational needs. The evaluation included numerous recommendations for IEP development based on Student's individual needs as identified in the evaluation.²²²
112. Mr. ***, *** Specialist, concluded that the results of the FIE's *** fit very well with where he considered Student to be functioning, and he did not have any concerns regarding the accuracy of the results.²²³
113. Dr. ***, Petitioner's expert, concluded that the District's evaluators selected the correct diagnostic instrument to determine the range of Student's *** problems.²²⁴

²¹⁸ Complaint at 15.

²¹⁹ RE-24 at 2.

²²⁰ RE-24 at 2, 41.

²²¹ RE-24 at 3.

²²² RE-24 at 41.

²²³ Tr. at 536-37 (suggesting that the *** is a portion of the FIE).

²²⁴ Tr. at 275.

114. ***, District Director of Special Education, analyzed the FIE regarding its appropriateness.²²⁵ After reviewing all of the recommendations from *** and other notes, she concluded that the FIE was appropriate and in line with what would be appropriate to assess Student.²²⁶
115. Petitioner failed to present sufficient evidence at the due process hearing that the District's evaluation was not conducted appropriately or that it failed to address all areas of disability and suspected need.

Other Requested Remedies

116. In addition to the requested IEE, Petitioner seeks a finding/order that professionals selected by Parents be given full access to observe Student in Student's educational setting, that the District hire a "school intervener"²²⁷ at public expense, that the District hire a 1:1 aide who is privately trained to meet Student's needs, additional staff training, broader inclusion, the purchase of ***, or private placement in the alternative.²²⁸
117. Petitioner did not meet Petitioner's burden of proof on any of the allegations in the Complaint, thus rendering moot further analysis and findings related to the requested remedies.

IV. APPLICABLE LAW

The IDEA creates a presumption in favor of the education plan proposed by the school district and places the burden of proof on the party challenging the plan.²²⁹ With the exception of Respondent's counterclaim, Petitioner bears the burden of proof on all issues at hearing.²³⁰ Petitioner must, therefore, overcome the presumption in favor of the District's education plan, and establish that the District failed to provide Petitioner with a FAPE, by establishing that: (1) the District failed to comply with the procedures set forth in IDEA; or (2) the IEP developed by

²²⁵ Tr. at 1068.

²²⁶ Tr. at 1068.

²²⁷ PHC Tr. at 178. "A person who can advocate and give the disabled person the voice and could report back to me [Mother] if anything happened." Petitioner abandoned this requested remedy during the hearing. See Tr. at 178-79.

²²⁸ Petitioner's Request for Due Process Hearing at 15-16.

²²⁹ *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 536-537 (2005); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2011).

²³⁰ *Id.*

the District through the IDEA's procedures was not reasonably calculated to enable Student to receive educational benefit.²³¹

Furthermore, even if a procedural violation were properly found to exist, liability cannot be based solely on a procedural violation of the IDEA. A violation of the IDEA based on a procedural error can only arise if the procedural error: (1) impedes the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the IEP process; or (3) caused a deprivation of educational benefits.²³²

A. Safety

The IDEA is "an ambitious federal effort to promote the education of handicapped children."²³³ Pursuant to the IDEA, Congress "offers federal funds to states that demonstrate, inter alia, that they have developed plans to assure 'all children with disabilities residing in the state' a 'free appropriate public education' (FAPE)."²³⁴ The statute is not neutral in its view of what generally constitutes an appropriate public education for children with disabilities. Rather, IDEA "expresses a strong preference" for disabled children "to be educated, 'to the maximum extent appropriate,' together with their non-disabled peers" and, accordingly, requires "special education and related services [to] be provided in the least restrictive setting consistent with a child's needs."²³⁵

²³¹ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 207-208, 102 S.Ct. 3034, 3051 (1982).

²³² 20 U.S.C. § 1415(f)(3)(E)(ii); see also *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003); *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 520-21 (6th Cir. 2003).

²³³ *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d 119, 122 (2d Cir.1998) (quoting *Board of Educ. v. Rowley*, 458 U.S. 176, 179, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982)).

²³⁴ *Mackey v. Board of Educ.*, 386 F.3d 158, 159-60 (2d Cir.2004) (quoting 20 U.S.C. § 1412(a)(1)(A)).

²³⁵ *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d at 122 (quoting 20 U.S.C. § 1412(a)(5)(A)).

“The ‘centerpiece’ of the IDEA’s education delivery system is the ‘individualized education program,’ or ‘IEP.’”²³⁶ “The IEP, the result of collaborations between parents, educators, and representatives of the school district, ‘sets out the child’s present educational performance, establishes annual and short-term objectives for improvements in that performance, and describes the specially designed instruction and services that will enable the child to meet those objectives.’”²³⁷

The “IDEA also provides a variety of ‘procedural safeguards with respect to the provision of FAPE’ by school districts.”²³⁸ The IDEA requires states to provide a disabled child’s parent or guardian with “an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.”²³⁹ In response to such a complaint, a state independent hearing officer must conduct an “impartial due process hearing” and render a decision.²⁴⁰

It is well established that providing for the physical safety of a disabled student is a fundamental component of FAPE and hearing officers have the jurisdiction to review safety issues.²⁴¹ IDEA requires a state to implement procedural safeguards providing parents or guardians with “an opportunity to present complaints with respect to *any matter* relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.”²⁴² This broad language suggests that Congress did not intend to exclude from consideration any subject matter—including safety concerns—that could interfere with a disabled child’s right to receive a FAPE. This conclusion comports with common sense given that some infirmities will likely render disabled children more vulnerable to injury from certain

²³⁶ *Murphy v. Arlington Cent. Sch. Dist. Board of Educ.*, 297 F.3d 195, 197 (2d Cir.2002) (quoting *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988)); see 20 U.S.C. § 1414(d) (defining and describing the development, review, and revision of an IEP).

²³⁷ *Murphy*, 297 F.3d at 197 (quoting *Honig v. Doe*, 484 U.S. at 311, 108 S.Ct. 592).

²³⁸ *Mackey v. Board of Educ.*, 386 F.3d at 160 (quoting 20 U.S.C. § 1415(a)); see also *Walczak v. Fla. Union Free Sch. Dist.*, 142 F.3d at 122–23 (describing procedural safeguards).

²³⁹ 20 U.S.C. § 1415(b)(6).

²⁴⁰ 20 U.S.C. § 1415(f).

²⁴¹ *Lillbask ex rel. Mauclaire v. State of Conn. Dept. of Educ.*, 397 F.3d 77, 93 (2nd Cir. 2005).

²⁴² 20 U.S.C. § 1415(b)(6) (emphasis added).

conditions than their non-disabled peers, therefore requiring special accommodations to fulfill the statutory preference for educating such children together to the maximum extent possible:²⁴³

[W]e conclude that the broad language of 20 U.S.C. § 1415(b)(6) accords administrative hearing officers jurisdiction to review safety challenges to IEPs where such challenges relate to a disabled child's educational placement or the provision of a free appropriate public education plan.²⁴⁴

It is undisputed that Student suffered a series of accidents and minor injuries while attending District schools. It is equally clear that most of the accidents and injuries were easily preventable. While some District personnel may have been less vigilant than necessary or even negligent, the actions/omissions of District employees did not deny Student a FAPE. At all times while enrolled in District schools, Student received a FAPE.

B. Regression

The Supreme Court noted that Congress explicitly found that “in many instances the process of providing special education ... to handicapped children is not guaranteed to produce any particular outcome.”²⁴⁵ The Fifth Circuit has observed that the “IDEA does not entitle a disabled child to a program that maximizes the child's potential. Instead, IDEA guarantees a basic floor of opportunity....”²⁴⁶ Thus, the provision of a FAPE does not necessarily require the achievement of particular educational outcomes. The focus instead is on whether there is an IEP in place that was reasonably calculated to provide the student with appropriate opportunities to learn.

The IDEA does not mandate that actual educational progress must be shown to support the conclusion that a child is being provided with a FAPE.²⁴⁷ The Fifth Circuit has identified

²⁴³ *Lillbask ex rel. Mauclaire*, 397 F.3d at 93.

²⁴⁴ *Lillbask ex rel. Mauclaire*, 397 F.3d at 95.

²⁴⁵ *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982); *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir.1997).

²⁴⁶ *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

²⁴⁷ *Michael Z.*, 580 F.3d at 293-94.

four factors to determine whether an IEP is reasonably calculated to provide meaningful educational benefits under IDEA: (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by the key 'stakeholders;' and (4) positive academic and non-academic benefits are demonstrated."²⁴⁸ Thus, although positive educational outcomes can signal that an IEP is appropriate under the IDEA, the appropriateness of Student's IEP ultimately turns on whether it was *reasonably calculated* to provide an educational benefit and does not hinge on the showing of an actual positive outcome. The educational benefit, however, "cannot be a mere modicum or *de minimis*; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement."²⁴⁹ Hearing Officers are permitted to place as much weight as supported by the evidence and the credibility of the witnesses on each of the four *Michael Z.* factors. In other words, Hearing Officers are not required to consider or weigh the *Michael Z.* factors in any particular way.²⁵⁰

Having considered and weighed the *Michael Z.* factors, the Hearing Officer finds Student's IEPs were *reasonably calculated* to provide, and in fact did provide, an educational benefit that demonstrated actual positive outcomes.²⁵¹

The regression issue was barred by the SOL; however, having applied the *Michael Z.* factors, the hearing officer finds Student did suffer regression but was provided adequate compensational services to correct the regression.

C. Least Restrictive Environment (LRE)

²⁴⁸ *Michael Z.*, 580 F.3d at 253.

²⁴⁹ *R.H. v. Plano Independent School Dist.*, 607 F.3d 1003, 1008 (5th Cir. 2010).

²⁵⁰ See, e.g., *Houston Indep. Sch. Dist. v. VP*, 566 F.3d 459, 467 (5th Cir. 2009); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 810 (5th Cir. 2003); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000).

²⁵¹ See RE-3, 4, 8, 14, 16-18, and 25-26. The Hearing Officer did find the District's policy of "reverse inclusion" troubling and inconsistent with the second *Michael Z.* factor of LRE. Reverse inclusion is not the LRE but Student's IEPs were still reasonably calculated to provide a significant educational benefit demonstrating positive outcomes.

One of the primary mandates of the IDEA is “mainstreaming,” which is the requirement that an IEP place a disabled child in the LRE for his/her education:

In general, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.²⁵²

“By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the IDEA,” the requirement that a school district provide a FAPE on the one hand, and the requirement that, on the other hand, it does so within the least restrictive environment.²⁵³ “Even when school officials can mainstream [a] child,” however, “they need not provide for an exclusively mainstreamed environment.”²⁵⁴ Rather, “the IDEA requires school officials to mainstream each child only to the maximum extent appropriate. In short, the IDEA’s mandate for FAPE qualifies and limits its mandate for education in the regular classroom.”²⁵⁵

In *Daniel R.R.*, the Fifth Circuit established a flexible, two-part test for determining whether an IEP’s placement was in the LRE. “First, can education in the regular classroom, with the use of supplemental aids and services, be achieved satisfactorily for a given child?”²⁵⁶ “If it cannot and the school intends to provide special education or to remove the child from regular education, second, has the school mainstreamed the child to the maximum extent appropriate?”²⁵⁷ The Fifth Circuit further explained, “[A]t the outset of step one, we must examine whether the state has taken steps to accommodate the handicapped child in regular education.... If the state has made no effort to take such accommodating steps, our inquiry ends,

²⁵² 20 U.S.C. § 1412(a)(5)(A). See *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989).

²⁵³ *Daniel R.R.*, 874 F.2d at 1044.

²⁵⁴ *Daniel R.R.*, 874 F.2d at 1045.

²⁵⁵ *Daniel R.R.*, 874 F.2d at 1045.

²⁵⁶ *Daniel R.R.*, 874 F.2d at 1048.

²⁵⁷ *Daniel R.R.*, 874 F.2d at 1048.

for the state is in violation of the Act's express mandate to supplement and modify regular education."²⁵⁸

With the District's use of "reverse inclusion," the record reveals Student's *** IEP included placement in a special education setting for about *** of the school day, and the remaining time in the general education environment with special education support. Given the level of support and assistance that Student requires to progress in Student's IEP goals, overall the District has mainstreamed Student to the maximum extent possible.

D. Lack of Collaboration and Communication with Parents

A central component of the IDEA is the cooperative process that it establishes between parents and schools.²⁵⁹ The central vehicle for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children,²⁶⁰ develop an IEP for each one,²⁶¹ and review every IEP at least once a year.²⁶² Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide.²⁶³

Parents and guardians play a significant role in the IEP process. They must be informed about and consent to evaluations of their child under the Act.²⁶⁴ Parents are included as members of "IEP teams."²⁶⁵ They have the right to examine any records relating to their child, and to obtain an "independent educational evaluation of the[ir] child."²⁶⁶ They must be given prior

²⁵⁸ *Daniel R.R.*, 874 F.2d at 1048.

²⁵⁹ *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 51, 126 S.Ct. 528, 163 L.Ed. 387 (2005) quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 183, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) ("Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, ... as it did upon the measurement of the resulting IEP against a substantive standard").

²⁶⁰ 20 U.S.C. § 1414(a)-(c).

²⁶¹ 20 U.S.C. § 1414(d)(2).

²⁶² 20 U.S.C. § 1414(d)(4).

²⁶³ 20 U.S.C. § 1414(d)(1)(A).

²⁶⁴ 20 U.S.C. § 1414(c)(3).

²⁶⁵ 20 U.S.C. § 1414(d)(1)(B).

²⁶⁶ 20 U.S.C. § 1415(b)(1).

written notice of any changes in an IEP,²⁶⁷ and be notified in writing of the procedural safeguards available to them under the Act.²⁶⁸ If parents believe that an IEP is not appropriate, they may seek an administrative “impartial due process hearing.”²⁶⁹

E. Requested Remedies: Independent Educational Evaluation

Under 20 U.S.C. § 1415(b)(1), state and local agencies are to provide to parents the actual benefit of paying for an IEE under appropriate circumstances.²⁷⁰ Disputes over IEE reimbursement are governed by 34 C.F.R. § 300.502, which reads in relevant part:

(b) Parent right to evaluation at public expense.

[...]

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

- (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

A local education agency (LEA) must initiate or request a hearing if it wishes to decline reimbursement on the ground that its own evaluation was appropriate under Section (b)(2)(ii). The District did file a counterclaim in response to Petitioner’s request for an IEE and seeks a finding that the District’s FIE was appropriate. As discussed in the Findings of Fact, the District proved by a preponderance of the evidence that it’s FIE was appropriate. A school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a child, including information provided by the parent, that may

²⁶⁷ 20 U.S.C. § 1415(b)(3).

²⁶⁸ 20 U.S.C. § 1415(d)(1).

²⁶⁹ 20 U.S.C. § 1415(f).

²⁷⁰ *Phillip C. ex rel. A.C. v. Jefferson County Bd. of Educ.*, 701 F.3d 691, 697 (11th Cir. 2012).

assist in determining whether the child has an IDEA disability resulting in a need for special education and related services, and assist in determining the content of the child's IEP.²⁷¹ The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors.²⁷² Assessment materials must be selected and administered so as not to be discriminatory on a racial or cultural basis; administered in the child's native language and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; used for the purposes for which they are valid and reliable; administered by trained and knowledgeable personnel; and administered in accordance with any instructions provided by the producer of the assessment.²⁷³ These requirements were exceeded by the District.

V. CONCLUSIONS OF LAW

1. The District is an LEA responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding, and the District is required to provide each disabled child with a FAPE pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. *** (Student), by next friends *** (Mother) and *** (***/ Father) (collectively, Petitioner) bear the burden of proof on all issues raised in Petitioner's Complaint. *Schaffer ex rel. v. Weast*, 546 US 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The District bore the burden of proof on its counterclaim defending its Full Individual Evaluation (FIE) and challenging Petitioner's request for an Independent Educational Evaluation (IEE) in all areas of suspected disability and need at public expense. *Schaffer ex rel. v. Weast*, 546 US 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
4. The one-year statute of limitation (SOL) began running one year before the date the Complaint was originally filed—April 13, 2015. There was insufficient evidence presented to establish either exception to the Texas SOL rule: (1) specific misrepresentations by the District that it had resolved the problem forming the basis of the Complaint; or (2) the District withheld information from Parents that was required to be provided by 34 C.F.R. § 300.1. All issues raised in the complaint occurring after ***, are time barred by the SOL. 19 Texas Administrative Code § 89.1151(c)-(d)(1)-(2).

²⁷¹ 34 CFR §§300.8(a)(1), .304(b)(1).

²⁷² 34 CFR § 300.304(b)(3).

²⁷³ 34 C.FR § 300.304(c)(1).

5. The numerous accidents and minor injuries Student suffered while attending District schools were unfortunate and troubling; they are also somewhat understandable in the sense that Student is ***. The numerous accidents and minor physical injuries suffered by Student at District schools did not threaten Student's health in a manner that undermined Student's ability to learn and did not rise close to the level of denying Student a FAPE. *See A.S. v. Trumball Bd. of Educ.*, 414 F. Supp. 2d 152, 178 (D. Conn. 2015) (“[I]f the proposed placement of [Students] in the Board's schools threatened their health in a manner undermining their ability to learn, such a placement would deny the children the benefits that the IDEA guarantees.”).
6. Student experienced regression in the area of communication assistive technology. The regression occurred outside the SOL. The regression was due to human error in data collection. The District provided Student adequate compensatory services that successfully remediated the regression and Student's IEPs were, at all relevant times, reasonably calculated to enable Student to achieve educational benefits. *Cypress-Fairbanks Independent School Dist. v. Michael F. by Barry F.*, 118 F.3d 245, 252-53 (5th Cir. 1997).
7. The District's policy of “reverse inclusion” was an attempt at inclusiveness based upon the nature or severity of Student's disabilities. Those disabilities made it such that education in regular classes with the use of supplementary aids and services could not adequately achieve Student's educational goals. Petitioner's *** IEP included placement in a special education setting for *** of the school day, and the remaining time in the general education environment with special education support. Given the level of support and assistance that Student requires to progress in Student's IEP goals, overall the District has mainstreamed Student to the maximum extent possible and achieved placement in the LRE. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. §§ 300.114(a)(1)-(2); 300.116(a)(2); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989).
8. A central component of the IDEA is the cooperative process that it establishes between parents and schools and the primary mechanism for this collaboration is the IEP process. State educational authorities must identify and evaluate disabled children, develop an IEP for each one, and review every IEP at least once a year. Each IEP must include an assessment of the child's current educational performance, must articulate measurable educational goals, and must specify the nature of the special services that the school will provide. The preponderance of the evidence demonstrates that Parents were made full and equal partners in developing and implementing Student's IEPs. Parents exercised their right to examine records relating to their child, they were given prior written notice of any changes in an IEP, and they were notified in writing of the procedural safeguards available to them under the Act. The District went to extraordinary lengths to include Parents in Student's entire educational program and satisfied all collaboration requirements. *Schaffer ex rel. Schaffer v. West*, 546 U.S. 49, 51, 126 S.Ct. 528, 163 L.Ed. 387 (2005) citing and quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 183, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982); 20 U.S.C. §§ 1414(d)(3)(A)(ii), 1415(b)(1); 34 C.F.R. § 300.321(a)(1).

9. The preponderance of the evidence established that the District's FIE was appropriate. The District's counterclaim in response to Petitioner's request for an IEE satisfied the procedural requirement at 34 C.F.R. § 300.502(B)(2)(i). The District utilized a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student, including information provided by Parents that may assist in determining whether the child has an IDEA disability resulting in a need for special education and related services, and assist in determining the content of the child's IEP. The District's FIE used technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors. The assessment materials were selected and administered so as not to be discriminatory on a racial or cultural basis; administered in Student's native language and in the form most likely to yield accurate information on what Student knew at the time and could do academically, developmentally, and functionally; and were used for the purposes for which they are valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with any instructions provided by the producer of the assessment. These requirements were exceeded by the District. The District met its burden of showing that the FIE was appropriate and that an IEE at public expense is unnecessary. 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(B).
10. Petitioner did not prevail on any of the contested issues at hearing; consequently, Petitioner is not entitled to any of the additional remedies or relief requested. The evidence establishes that Student was consistently provided a FAPE while attending District schools. Any procedural deviation did not impede Student's right to a FAPE, did not significantly impede Parents' right to participate in the decision-making process, and did not result in a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(i)-(ii).

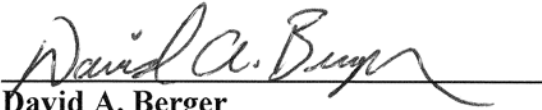
ORDER

After considering the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer hereby orders as follows:

The Hearing Officer **DENIES** Petitioner's requested relief.

The Hearing Officer **GRANTS** the District's counterclaim.

SIGNED July 19, 2016.



David A. Berger
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States.²⁷⁴

²⁷⁴ 20 U.S.C. § 1451(i)(2); 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).