

DOCKET NO. 270-SE-0419

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

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, STUDENT, b/n/f PARENT (“Petitioner” or “Student”) brings this action against the Frisco Independent School District (“Respondent,” or “the School District”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400-1482 (IDEA) and its implementing state and federal regulations. The main issues in this case are whether the School District failed to provide Student with a free, appropriate public education (FAPE).

The hearing officer concludes Student was not denied FAPE by the School District during the relevant time period and Petitioner is not entitled to any of the requested relief.

II. PROCEDURAL HISTORY

A. Legal Representatives

Student was represented throughout this litigation by Student’s non attorney advocate Carolyn Morris with Parent-to-Parent Connection. The School District was represented throughout this litigation by Nona Matthews with the law firm of Walsh, Gallegos, Trevino, Russo & Kyle.

III. DUE PROCESS HEARING

The due process hearing was conducted on July 29 - 30, 2019. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Student's non attorney advocate Carolyn Morris. Parent PARENT attended the hearing each day.

Respondent continued to be represented by its legal counsel Nona Matthews. In addition, ***, the Executive Director of Special Education for the School District, and ***, the Director of Special Education, attended the hearing as the party representatives. Both parties filed written closing arguments in a timely manner. The Decision in this case is due August 30, 2019.

IV. 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 during the 2018-2019 school year, specifically with regard to the following:
 - a. Individualized Education Plan (IEP): Whether the School District failed to develop and implement an appropriate IEP.
 - b. LRE: Whether the School District failed to educate Student in Student's Least Restrictive Environment.
 - c. Progress: Whether the School District failed to properly address Student's failing grades.
2. EVALUATION: Whether the School District failed to timely and appropriately evaluate Student in all areas of suspected disability and need.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Student's Complaint. The

School District contends it provided Student with FAPE during the relevant time period and Petitioner is not entitled to any of the requested relief. Respondent also raises these additional legal issues:

1. **STATUTE OF LIMITATIONS:** Whether any of Student's IDEA claims that accrued prior to April 30, 2018 should be dismissed as outside the one year statute of limitations rule as applied in Texas.
2. **JURISDICTION:** Whether Petitioner's claims arising under any law unrelated to the IDEA should be dismissed as outside the hearing officer's jurisdiction.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. The School District educate Student in all general education classes with inclusion in all core classes.
2. The School District evaluate Student with a Full Individual Evaluation (FIE), Functional Behavior Assessment (FBA), and psychological evaluation.
3. The School District train anyone that provides services to Student to ensure safety and success.
4. The School District reimburse Petitioner for any expenses for evaluations, medical cost, and private tutoring costs.

B. Respondent's Requested Relief

1. Dismiss any claims arising outside the one year statute of limitations rule as applied in Texas.

VI. STATUTE OF LIMITATIONS

Petitioner limited the relevant time period for the Complaint to the 2018-2019 school year. The Complaint was filed in April of 2019. Therefore, the time period falls within the one year statute of limitations period as applied in Texas.

VII. CLAIMS OUTSIDE HEARING OFFICER'S JURISDICTION

Petitioner did not raise any claims arising under laws other than the IDEA.

VIII. FINDINGS OF FACT

1. Student is *** years old and eligible for special education services from the School District as a student with *** and Speech Impairment.¹ Student participated in the School District's *** ***.² Student enrolled in the School District in *** for the 2009-2010 school year and has attended the School District since that time. Student attended *** for the 2018-2019 school year ***.³
2. A private neuropsychological evaluation was completed on Student in June ***. Student was referred for the evaluation by Student's pediatrician due to developmental delays in speech, articulation, receptive language, and expressive language.⁴ Student's full scale IQ was ***, which is well below average.⁵ The private evaluator recommended Student would benefit from a smaller classroom size setting with age-appropriate peers, where Student could receive more individual attention and less environmental distractions. Student noted a smaller classroom size would allow Student additional opportunities to receive positive reinforcement as Student develops the language skills that are vital to Student's academic success and self-confidence.⁶
3. Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) in 2012 by a private neurologist. ***.⁷
4. A second private neuropsychological was completed on Student on December ***, ***. The evaluation was completed because Student's mother wanted a current profile of

¹ Joint Exhibit 1 p. 1. (referred to hereafter as JE ___ or JE ___ at ___).

² JE 10 at 1.

³ JE 6 at 1.

⁴ JE 10 at 1.

⁵ JE 10 at 6.

⁶ JE 10 at 17.

⁷ Respondent's Exhibit 8 p. 4. (referred to hereafter as RE ___ or RE ___ at ___).

Student's cognitive and academic strengths and weaknesses to assist with educational placement.⁸ The evaluator noted Student relies on language to help Student make sense of Student's environment, but Student's language skills are "deficient at worse and unreliable at best." Student demonstrated some mild cognitive improvement in processing speed and *** compared to the evaluation from June ***.⁹ Student's progress is appropriately measured relative to Student's own previous levels rather than that of Student's peers due to Student's relatively slow rate of acquisition. Student would benefit from significant intervention in a *** setting where Student can receive more individualized instruction in Student's core academic courses while having time with nondisabled peers to practice language skills.¹⁰

5. A reevaluation FIE was completed on Student on April ***, 2017. Prior evaluations, parent information, and teacher information were used to complete the evaluation.¹¹ The Critical Evaluation of Language Fundamentals 5th Edition (CELF-5) was administered to Student. Student's general language ability, receptive, and expressive language were in the below average range.¹² Student exhibited a language and articulation disorder which adversely affects Student's educational performance.¹³ At the time of this evaluation, Student was below grade level in all classes.¹⁴ Student met the criteria for special education services in *** and speech impairment.¹⁵
6. The School District held an Admission, Review, and Dismissal Committee (ARD) meeting on May ***, 2018 to develop Student's *** IEP. Student's IEP included Present Levels of Academic Achievement and Functional Performance (PLAAFPs) in the areas of reading, writing, math, ***, ***, ***, and speech/language factors.¹⁶ The IEP included goals and objectives in all of these areas implemented by a general or special education teacher and progress was to be monitored concurrent with the issuance of report cards.¹⁷ Parent attended this ARD meeting with an advocate and received procedural safeguards.¹⁸
7. The IEP included several accommodations for Student across settings. Student received math *** (***) in the *** classroom. Student received *** in the general education

⁸ JE 11 at 1.

⁹ JE 11 at 2.

¹⁰ JE 11 at 3.

¹¹ JE 1 at 1.

¹² JE 1 at 5.

¹³ JE 1 at 7.

¹⁴ JE 1 at 10.

¹⁵ JE 1 at 11.

¹⁶ JE 2 at 1, 5-7.

¹⁷ JE 2 at 10-20.

¹⁸ JE 2 at 38, 48.

- classroom with inclusion support.¹⁹ Student participated in *** (***) *** general education.²⁰ The IEP indicated Student receive modified Texas Essential Knowledge and Skills (TEKS), and would take *** ***.²¹
8. During the May 2018 ARD meeting, the School District notified parents Student's achievement ***.²² The *** is for students functioning below grade level.²³ It measures a student's prerequisite skills that are deemed necessary to be successful. It is not based on grade level TEKS, but prerequisite skills.²⁴ Student functioned at *** grade level for prerequisite skills. Student accessed grade level TEKS through prerequisite skills.²⁵
 9. In September 2018 and January 2019, the School District and parent agreed to remove supervision during transitions from Student's IEP accommodations. A daily communication sheet was added to allow staff to communicate with parents.²⁶ In January 2019, the School District and parent agreed to add additional accommodations to Student's IEP.²⁷
 10. The ARD committee met on April ***, 2019 for Student's annual ARD. Parents were present with two advocates. Parents requested an FIE in the areas of cognitive, achievement, transition, psychological evaluation with an FBA, assistive technology, speech, autism spectrum disorder, and OHI for ADHD.²⁸ Parents requested Student be more challenged and placed in the general education classroom. The ARD committee agreed for a trial period of Student in all general education classes with modifications, accommodations, and inclusion support without changing the setting in Student's IEP. The ARD recessed to be reconvened.²⁹
 11. The trial period began on April ***, 2019 and lasted through May ***, 2019. This period was 7 school days.³⁰ Student continued in general education *** with inclusions. Student

¹⁹ JE 2 at 25.

²⁰ Transcript (T) I at 316. (referred to hereafter as T ___ at ___).

²¹ JE 2 at 25, 27.

²² JE 2 at 33.

²³ T I at 202.

²⁴ T I at 231.

²⁵ T I at 212-13.

²⁶ JE 3 at 1-2

²⁷ JE 4 at 3.

²⁸ JE 5 at 40.

²⁹ JE 5 at 41.

³⁰ T I at 188-89.

- was placed in general education math and *** with inclusion supports.³¹ The trial period ended because stay-put was put in place due to the filing of this due process complaint.³²
12. The ARD committee reconvened on May ***, 2019. The parents were not present. Parents were given notice of the reconvene ARD for May ***, 2019; however, they were not ready to move forward at that time. Parents were given notice of the May ***, 2019 reconvene ARD with options of other dates if May *** did not work with their schedule. Parents advised the ARD time was not convenient and would not attend.³³ Parents did not attend because the due process hearing was pending and they were attempting to resolve the matter via mediation.³⁴
13. The ARD committee recommended placement for the 2019-2020 school year in the *** (***) classroom so Student can focus on prerequisite skills needed for academic success. Math, ***, ***, and *** will be in the *** where TEKS are modified. Student's *** would be in the general education setting with modified TEKS.³⁵ Student requires more support in Student's classes than general education with inclusion support can provide.³⁶ The curriculum in the general education setting is continuing to move forward whether Student understands the concepts or not.³⁷
14. *** classroom has a small teacher to student ratio. The classroom has one teacher and *** paraprofessionals with typically *** students.³⁸ Students work on *** and prerequisite skills needed to build on in order to progress. The work is at a slower pace than general education and *** classrooms. The class provides many opportunities for one-on-one direct teaching.³⁹ In the *** class, Student would have more time to repeat skills until Student understands the concept before moving to the next concept.⁴⁰
15. The School District completed a reevaluation FIE on Student on July ***, 2019. Prior evaluations, parent input, teacher input, and prior school records were used to complete the evaluation.⁴¹ The CELF-5 was administered to Student. Student's receptive language,

³¹ T I at 75.

³² T I at 190.

³³ JE 5 at 42.

³⁴ T II at 397.

³⁵ JE 5 at 43.

³⁶ T I at 76.

³⁷ T II at 564.

³⁸ T I at 194.

³⁹ T I 77-78.

⁴⁰ T I at 303.

⁴¹ RE 8 at 1.

expressive language, language content, and language memory were in the very low/severe range of functioning.⁴²

16. The evaluators administered the FIE in Student's native language of English.⁴³ The evaluators used multiple assessments tools to evaluate Student's speech and language; achievement, development, and functional performance; cognitive and adaptive behavior; and emotional behavior. The evaluators assessed Student for ADHD and Autism.⁴⁴ Student did not meet the criteria for Autism or Other Health Impairment – ADHD.⁴⁵ Student is diagnosed with ADHD; however, Student's *** is effective.⁴⁶ Student's overall cognitive assessment score was ***.⁴⁷ Student continued to ***.⁴⁸
17. Student exhibited adaptive behavior deficits in the following areas: communication, functional academic, use of community resources, and self-direction.⁴⁹ Adaptive behavior is the degree to which the student exhibits personal and social self-sufficiency.⁵⁰
18. Parents reported Student does not follow two- to three-step directions independently.⁵¹ Student's teachers indicated Student exhibits poor oral language skills and functions one year or more behind grade level in Language Arts, Reading, and Math. Student turns in homework and assignments on time, arrives to class on time, has the necessary materials for class, and keeps Student's assignments, books, and other supplies in order.⁵² Student needs support and encouragement to attempt and complete Student's work.⁵³
19. Student mastered Student's IEP annual goals for *** in ***, Speech/Language factors, Reading, Writing, and ***. Student mastered 3 out of 5 goals for Math and did not master Student's *** goal.⁵⁴ At the end of ***, Student passed all of Student's classes except ***. The ARD committee drafted new goals for Student to continue working on prerequisite skills.⁵⁵

⁴² RE 8 at 10.

⁴³ RE 8 at 6.

⁴⁴ RE 8.

⁴⁵ RE 8 at 52.

⁴⁶ RE 8 at 51.

⁴⁷ RE 8 at 51.

⁴⁸ RE 8 at 14.

⁴⁹ RE 8 at 51.

⁵⁰ RE 8 at 30.

⁵¹ RE 8 at 15.

⁵² RE 8 at 15.

⁵³ RE 8 at 15-16.

⁵⁴ JE 8; T I at 324.

⁵⁵ T I at 232.

20. *** and Student's final grade was a ***. ***; however, Student passed the year with an ***.⁵⁶ Student received *** in Math and Reading in March 2019.⁵⁷ Student's grades on Student's report card are not indicative of Student's understanding of the material. The grades are reflective of the re-teaching, retesting, and accommodations Student had in place.⁵⁸ Specifically in ***, Student's grades were passing at times due to the participation or completion component of the grade.⁵⁹
21. Student was graded in Student's general education classes based on Student's abilities. Student's grades in *** are not true reflections of Student's understanding of the concepts.⁶⁰
22. In the School District student's grades are put into a computerized grade book that can be accessed by parents. Student's test grades were put into the system so Student's failing test grades were in the system until the retest grade was put in the system.⁶¹ Teachers did not notify parents Student's passing report card grades were not indicative of Student's grade-level learning.⁶²
23. Students are given a "grace" period at the beginning of *** to adjust to changing classes and teachers. Student's grades declined at the end of the year because the material became harder. Student was unable to make connections with concepts and unable to master skills.⁶³ Student required significant repetition to master skills.⁶⁴ Student needed extra prompts and extra visual supports to make connections.⁶⁵
24. Student struggled with tests in the general education setting with inclusion support.⁶⁶ The success Student had at the beginning of the *** year was tapering off.⁶⁷ Student's inclusion teacher spent a lot of one-on-one time with Student rather than the typical inclusion teacher pattern of working with all students in the classroom needing inclusion support.⁶⁸ Student

⁵⁶ JE 7 at 11.

⁵⁷ JE 5 at 2.

⁵⁸ T I at 305.

⁵⁹ T II at 465-66.

⁶⁰ T II at 548.

⁶¹ T II at 560-61.

⁶² T II at 38; 550.

⁶³ T I at 302.

⁶⁴ T II 304.

⁶⁵ T I at 303.

⁶⁶ T I at 190.

⁶⁷ T I at 192.

⁶⁸ T I at 192-93.

had difficulty maintaining being on-task, Student struggled with starting Student's work, and needed a considerable amount of support.⁶⁹

25. Student's success was based upon the inclusion teacher being present so when Student made a mistake, it was corrected immediately so Student would not learn the information incorrectly. Student's tests were modified and Student retook tests if Student failed. At times, Student took multiple retests. Each test was modified and each retest was modified further.⁷⁰ Student's inclusion teacher spent approximately *** of her time directly working with Student in ***. She would also check on Student during the other 30% of her time in the class while she was working with other students.⁷¹
26. *** become more advanced with each grade level.⁷² *** relies heavily on *** and Student struggled to understand *** in large part due to *** deficits.⁷³ Student did not make much progress or gain much knowledge in ***.⁷⁴ Student was able to repeat information immediately after being told a definition; however, Student did not retain the information when asked later in a class period or in a following class period.⁷⁵ Student had difficulty learning abstract concepts and applying knowledge. For example, Student could memorize information on a graph during class, but if given a graph later and asked to find the same information Student would have a hard time doing so without help.⁷⁶
27. Student did not interact much with Student's peers in the general education classrooms. Student did not initiate interactions with them. Student did not benefit academically from nondisabled peers in Student's general education classes.⁷⁷
28. Student always has a smile and a willing attitude to follow any directions the teachers request.⁷⁸ The School District's speech pathologist *** with Student during speech instruction because Student was motivated ***.⁷⁹
29. Student's School District speech pathologist discussed Student with Student's case manager and observed Student in the *** classroom to monitor how Student was

⁶⁹ T I at 193.

⁷⁰ T I at 301.

⁷¹ T II at 539.

⁷² T I at 326.

⁷³ T II at 450-51.

⁷⁴ I II at 466.

⁷⁵ T II at 559.

⁷⁶ T II at 562.

⁷⁷ T II at 553.

⁷⁸ JE 2 at 34.

⁷⁹ T I at 344.

progressing with speech goals.⁸⁰ The principal and *** teacher worked together to try different techniques for Student to progress. The principal regularly emailed parents.⁸¹ Student's case manager communicated with parents daily about Student's progress through Student's communication folder.⁸² Student's inclusion teacher and Student's case manager discussed Student on a daily basis about how Student was performing and ways to adjust teaching techniques.⁸³ Student's *** teacher and Student's inclusion teacher worked together to modify Student's curriculum.⁸⁴ Student's *** teacher communicated with parents almost daily.⁸⁵

IX. 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 Student'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).

⁸⁰ T I at 330.

⁸¹ T I at 169.

⁸² T I at 236.

⁸³ T I at 246.

⁸⁴ T II at 442-43.

⁸⁵ T II at 457.

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁸⁶ *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 2018-2019 school year *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit for the upcoming 2019-2020 school year. The burden of proof in this case is on Petitioner to show the school district did not do so. *Id.*

C. FAPE

1. The Four Factors Test

The Fifth Circuit has articulated a four factor test to determine whether a Texas 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), *E. R. by E. R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 757 (5th Cir. 2018).

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

⁸⁶ 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).

2. Individualized on the Basis of Assessment and Performance

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, 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). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P.*, 582 F.3d 576, 583(5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district “was reasonably calculated to enable Student to make progress appropriate in light of Student's circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017). This standard of “appropriately” does not require ambitions beyond what may be reasonably expected given a Student's circumstances. *E. R.*, 909 F.3d at 768 (5th Cir. 2018).

In developing an IEP, the ARD committee 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. 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 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 IEP implemented during the relevant time period was individualized on the basis of assessment and performance. IEP goals and objectives were developed to address Student's areas of need in speech, reading, writing, math, ***. The PLAAFPs used as the basis for formulating IEP goals and objectives in this area were derived

from multiple assessments as well as observation, teacher input, and parental input. The goals and objectives were measurable and based on Student's current level of ability. Student's TEKS were modified as well as Student's *** testing ***. The FIE indicated Student has *** and speech impairment. Student's IEP included accommodations and goals and objectives across all settings and subjects. It also included speech goals and objectives with direct speech instruction.

3. Least Restrictive Environment

The evidence showed Student was educated in the least restrictive environment. The IDEA requires that a student with a disability shall be educated with non-disabled peers to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment." 34 C.F.R. § 300.114(a)(2)(i)(ii). State regulations require the continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, *** room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.63(c).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.* This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting;
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting; and

- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

Daniel R.R. v. State Bd. of Educ., 874 F. 2d 1036, 1048 (5th Cir. 1989).

During Student's *** year, Student was in special education classes for math and *** and general education classes for *** with inclusion support. Student was in general education classes for *** ***. The School District provided an IEP with multiple accommodations and modified the curriculum for Student in Student's general education classes. Student was not successful in the *** or general education classrooms with these accommodations and modifications. Student's inclusion teacher spent at least *** time directly working with Student in ***. Despite this level of attention, Student *** was unable to grasp the concepts in class. Student's teachers testified Student did not receive much educational benefit from the general education setting because Student could not keep up with the curriculum. Student required repetition of the concepts and even with repetition was unable to recall information unless it was immediately after learning the information. To have Student in a general education classroom with a dedicated *** teacher would essentially be the same as educating Student in a separate classroom. Student is not successful on grade level work and to have Student in a classroom trying to complete grade level work would not be appropriate in light of Student's unique circumstances. *Andrew F*, 137 S. Ct. at 999 (2017), *Daniel R.R.* 874 F. 2d 1036. The proposed IEP for Student's *** year recommended placement in the *** classroom for math, ***, ***. The *** classroom is currently the best placement for Student to provide Student one-on-one instruction at Student's academic level. Student will be able to repeat concepts as needed and the curriculum will progress as Student progresses.

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

The evidence showed Student's services were provided in a coordinated, collaborative manner by key stakeholders. At least one parent, if not both, were present at most ARD meetings as well as a general education teacher, a special education teacher, and an administrator. The only ARD meeting missed by the parents was on May ***, 2019 when they chose not to attend because the due process hearing was filed. Parents were in regular contact with the School District as

supported by the ARD committee documents emails between the parents and teachers and administrators, teacher and administrator testimony, and parent testimony.

Student's general education teacher, Student's *** teacher, Student's *** teacher, and the principal were all in communication with each other regarding how to most effectively educate Student. The *** teacher and the parent were in almost daily contact with each other regarding Student's progress in ***. A daily communication folder went home with Student so parent was informed of Student's daily progress. When the parents had any concerns about Student emails were exchanged with teachers and administration. The School District did a trial with Student in all general education classes with inclusion support because the parents wanted all general education classes.

The School District failed to notify parent Student's passing report card grades were not a true indication of Student's grade-level work. However, parents were aware Student was not on grade level and was in fact multiple years behind Student's same-aged peers. They were also aware of the fact Student took the *** and Student's performance on the test.

5. Academic and Non-Academic Benefits

The evidence supports the conclusion Student received both academic and non-academic benefits from the educational program at issue. While Student may not have mastered all of Student's goals in math ***, Student made progress. 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. *Andrew F.* 137 S. Ct. at 999. 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. *V.P.*, 582 F. 2d at 590. The evidence showed Student received more than a de minimus educational benefit from the program provided given Student's

unique circumstances. *Andrew F.*, 137 S. Ct at 999.

Student met all of Student's IEP goals ***, Speech/Language factors, Reading, Writing, ***. Student met 3 out of 5 goals in math. Student received a *** on the *** test. Once the School District recognized Student was performing worse at the end of the school year, the School District determined education in the general education setting with inclusion support and in the *** classroom were not appropriate to meet Student's needs. The School District recommended placement in the *** classroom to provide Student with more one-on-one instruction at Student's level of ability.

Student was provided FAPE by the School District. The courts have never specified the four factors must be considered or weighed in any particular way. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 293 (5th Cir. 2009). The whole educational experience, and its adaptation to confer "benefits" on the child, is the ultimate statutory goal. *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390, 397 (5th Cir. 2012). In this case, Student received positive academic and non-academic benefit as evidence by the progress Student made on Student's IEP goals, which were measured at Student's grade-level abilities.

D. Evaluation

Either a parent of a child or a school district may initiate a request for an evaluation to determine if the child is a child with a disability. 34 C.F.R. § 300.301 (b). The parent must provide consent for the evaluation. 34 C.F.R. § 300.300. Public agencies must ensure children are assessed in all areas related to the suspected disability including, if appropriate, social and emotional status. 34 C.F.R. § 300.304(c)(4).

Parents requested evaluations in the areas of cognitive, achievement, transition, psychological evaluation with an FBA, assistive technology, speech, autism spectrum disorder, and OHI for ADHD. The School District provided evaluations in most of those areas in the FIE from July ***, 2019. Student did not need an FBA because Student did not demonstrate any

problem behaviors that interfered with Student's ability to access Student's education. Student was a polite, compliant, hard-working Student. The School District evaluated Student in all areas of suspected disability and need.

X. CONCLUSIONS OF LAW

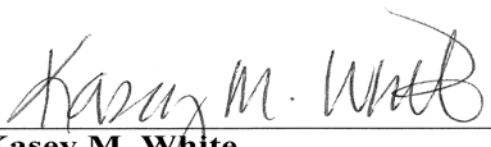
1. Student was provided FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. 176 (1982); *Endrew F.*, 137 S. Ct. 988 (2017); *E. R.*, 909 F.3d at 768 (2018).
2. Respondent timely and appropriately evaluated Student in all areas of suspected disability. 34 C.F.R. § 300.304.
3. Respondent educated Student in the LRE during the 2018-2019 school year. The proposed placement for the 2019-2020 school year was the LRE for Student. *Daniel R.R.*, 874 F. 2d 1036.

XI. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.
2. Petitioner's request for an evaluation for an FBA and psychological evaluation is **DENIED**. Respondent already completed an FIE.
3. Petitioner's request for reimbursement for expenses for evaluations, medical costs, and private tutoring are **DENIED**.

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

SIGNED August 29, 2019.



Kasey M. White
Special Education Hearing Officer
For the State of Texas

XII. 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).