

DOCKET NO. 276-SE-0817

STUDENT bnf	§	BEFORE A SPECIAL EDUCATION
PARENT,	§	
Petitioner	§	
v.	§	HEARING OFFICER FOR
CLEVELAND INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Petitioner, STUDENT, b/n/f PARENT (“Petitioner” or “Student”) brings this action against the Cleveland Independent School District (“Respondent,” or “the District”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the District failed to provide Student with a free appropriate public education (FAPE). The District did provide Petitioner with a FAPE during the 2016-17 school year.

A. Continuances and Extension of Decision Due Date

Petitioner filed a Request for Due Process Hearing on August 8, 2017. There were two continuances of this hearing. The hearing was originally scheduled for September 19, 2017, with the decision due on October 22, 2017. The first continuance was requested by both parties to allow scheduling for a two-day hearing as well as to allow time to mediate. The hearing was rescheduled for November 2 and 3, 2017, and the decision due date was extended for good cause to December 15, 2017. A second continuance was granted at Petitioner’s request to resolve scheduling conflicts for Petitioner’s counsel. The hearing was rescheduled for December 20 and 21, 2017, and the decision due date was extended for good cause to February 23, 2018. There were then two continuances of the decision due date to allow the parties additional time

for the written closing arguments. The decision due date was first extended for good cause, at the request of Petitioner without objection from Respondent, to March 9, 2018. Petitioner, without objection from Respondent, requested another continuance of the decision due date to March 12, 2018, so the parties could have sufficient time to prepare written closing briefs with access to the hearing transcript and allow the Hearing Officer sufficient time to review the briefs and issue a decision.

B. Legal Representatives

Student was represented throughout this litigation by Student's legal counsel, Jacqueline Dodd and Sharon Ramage, with the Ramage Law Group. The District was represented throughout this litigation by its legal counsel Cynthia Buechler with the law firm of Buechler & Associates. Dorene Philpot with the Philpot Law Office also appeared on behalf of Petitioner as co-counsel.

C. Resolution Session and Mediation

The parties met in a resolution session on August 15, 2017. The session was productive, but no settlement was reached. The parties elected to pursue mediation prior to proceeding to hearing. Although a mediator was assigned, no mediation occurred. The parties engaged in informal settlement negotiations, but those ultimately were not successful.

D. Preliminary Motions

There were several preliminary motions resolved prior to the due process hearing. Order No. 8, issued on December 5, 2017, granted Petitioner's Request for Observation by Petitioner's expert, Dr. ***. Order No. 9, issued on December 6, 2017, resolved discovery issues related to Petitioner's document requests. Order No. 12, issued on December 18, 2017, granted Petitioner's Motion to Compel Production of Protocols to Petitioner's expert, Dr. ***.

II. DUE PROCESS HEARING

The due process hearing was conducted on December 20-21, 2017. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Student's legal counsel Jacqueline Dodd and Sharon Ramage. Dorene Philpot with the Philpot Law Office also appeared on behalf of Petitioner as co-counsel for the hearing. Respondent continued to be represented by its legal counsel Cynthia Buechler.

III. ISSUES

A. Petitioner's Issues

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

1. Whether the District failed to provide Student with a FAPE within the meaning of the IDEA during the 2016-17 school year, including:
 - a. Whether the District failed to develop an appropriate Individualized Education Program (IEP) including appropriate academic, related services and social/emotional and behavioral goals;
 - b. Whether the District failed to appropriately implement Student's IEP when the District moved Student to other classes and did not provide the necessary accommodations and instructional services stated in Student's IEP;
 - c. Whether the District failed to develop an appropriate ***; and
 - d. Whether Student failed to make progress and was anxious about attending school as ***.
2. Whether the District failed to conduct timely re-evaluations of Student and whether the District failed to conduct evaluations in all areas of suspected need including, specifically, a Full Individual Evaluation (FIE) with an intellectual/cognitive evaluation and speech, occupational therapy (OT), and Assistive Technology (AT) evaluations;

3. Whether the District failed to provide Student's mother with prior written notice when it changed Student's placement and/or services and whether the school district failed to provide Student's mother with PWN at all other required times; *i.e.*, prior to the Admission, Review & Dismissal Committee meeting (ARD) conducted in October 2014, where Student's instructional code for placement was changed but there was no prior written notice or an ARD meeting to decide on a change in Student's placement.
4. Whether the District interfered in the ability of Student's mother to be a meaningful participant in the development of Student's education and, if so, whether that failure resulted in a failure to provide Student with FAPE;
5. Whether the one year statute of limitations should apply to Petitioner's claims related to the failure to provide the parent with prior written notice during the 2014-15 school year because the District withheld information from the parent it was required to provide; and
6. Whether Petitioner is entitled to compensatory relief beyond the one year statute of limitations period equal to the amount of the deprivation of FAPE.

B. Respondent's Legal Position and Additional Issues

Respondent contends Student received FAPE during the 2016-17 school year.

The District raises the following additional issues:

1. Whether Petitioner is entitled to Independent Educational Evaluations (IEE) at school district expense or whether the District has the absolute right to conduct its own evaluations before it must consider whether to grant a parental request for IEEs;
2. Whether Petitioner's claims arising outside the one year statute of limitation period should be dismissed; Respondent contends neither of the two exceptions to the one year statute of limitations should apply in this case;
3. Whether the scope of compensatory relief as articulated in *G.L. v. Ligonier Valley Sch. Dist.*, 802 F.3d 601 (3d Cir. 2015) should be applied in this jurisdiction; and
4. Whether the hearing officer has jurisdiction to resolve any of Petitioner's non-IDEA claims or the authority to award Petitioner's request for attorney's fees.

IV. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. The District fund an IEE in all areas of Student's needs (i.e., an independent FIE including intellectual/cognitive assessments, and OT, speech and AT evaluations) or, in the alternative, reimburse the parent for the cost of the IEEs;
2. Convene an ARD Committee meeting to revise Student's IEP to include all recommendations from the IEEs and to implement the Decision of the Hearing Officer;
3. The District provide Petitioner with compensatory educational services in an amount deemed appropriate by the Hearing Officer in all academic and related service areas; and
4. The District consult and collaborate with the IEE evaluators by conducting phone conferences with the IEE evaluators prior to the ARD meeting and inviting the IEE evaluators to participate in the ARD in the design of Petitioner's revised IEP.

B. Respondent's Requested Relief

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

V. FINDINGS OF FACT

1. Student is *** years old and eligible for special education as a student with ***. Student resided during the relevant time period within the boundaries of the District. Student is now in *** grade at ***.
2. Parents initially requested an evaluation for special education and related services on February ***, 2011.¹ The District ignored the request without providing prior written notice or procedural safeguards.²
3. Parents again requested an evaluation for special education and related services on

¹ P1A-2.

² TR, 96-97.

- January ***, 2012.³ The District also ignored this second request and did not provide the Parents with procedural safeguards or prior written notice.⁴
4. Parents made a third request for an evaluation for special education and related services on January ***, 2013, and this time the District conducted an FIE of Student for special education and related services. The FIE recommended Student be determined eligible for special education and related services as a student with ***.⁵ The ARD committee found Student eligible for special education and related services as a student with *** at an ARD Committee meeting on May ***, 2013.⁶
 5. Petitioner received a copy of the procedural safeguards for the first time on May ***, 2013.
 6. Petitioner received the procedural safeguards at the initial ARD in 2013, the Annual ARD in 2014, a brief ARD in October 2014, the Annual ARD in 2015, the annual ARD in 2016, and the annual ARD in 2017.⁷
 7. In January 2016, the District completed a Reevaluation of Existing Education Data (REED). The REED indicated that no additional areas of disability were suspected.⁸ It also indicated that no additional data were needed to indicate whether Student needs additional accommodations or modifications.⁹ The District informed Parent it did not feel it needed additional information and Parent agreed with that determination.¹⁰
 8. The ARD committee met for Student's annual ARD on January ***, 2016, and found Student remained eligible for special education as a student with ***.¹¹
 9. The IEP put in place at the January ***, 2016 annual ARD remained in place for the beginning of the 2016-17 school year.
 10. The ARD committee placed student into all general education classes.¹² Student's classroom setting did not change at any point during the 2016-17 school year.
 11. The IEP allowed Student a number of modifications or accommodations, including

³ PIB-1.

⁴ TR, 98.

⁵ R5-21.

⁶ P9-1-6.

⁷ TR, 554-555.

⁸ R6-2.

⁹ R6-12.

¹⁰ R2-21.

¹¹ R2-1.

¹² R2-15.

reduced assignments based on need, extra time for completing assignments based on need, frequent feedback, reading in chunks, and a teacher check for understanding.¹³ All accommodations were provided in Student's classes.

12. The IEP also provided "in-class support" in each of Student's general education core classes for *** minutes per class, *** times per week.¹⁴ In-class support is provided with an education teacher's aide in the classroom working with Student and other students in the general education classroom who receive special education to provide them extra attention.¹⁵
13. Student's next annual ARD committee meeting took place on December ***, 2016, where the committee developed Student's IEP for the remainder of the 2016-17 school year and the beginning of the 2017-18 school year. Student was in *** grade at *** when the ARD took place.
14. The Present Levels of Academic Achievement and Functional Performance (PLAAFPs) in the IEP are a restatement of Student's grades.¹⁶
15. The "measurable annual goals" are a restatement of grade-level Texas Essential Knowledge and Skills (TEKS) for all students.¹⁷ In ***, Student's goal in place at the start of this year related to ***.¹⁸ However, Student is now in *** grade and is *** and is not working on the *** TEKS.¹⁹ Similarly, in *** Student's goal concerns "****" and is a direct copy from the *** grade TEKS even though Student is now in *** grade.²⁰
16. The accommodations did not change from the prior IEP.²¹ Student also still receives the same "in-class support" on the same schedule as Student did from the previous IEP.²²
17. *** were first considered at the December 2016 ARD when Student was *** years old.²³ ***.²⁴ ***.²⁵ A *** evaluation was done for the student at that time to indicate

¹³ R2-7.

¹⁴ R2-17.

¹⁵ TR, 753.

¹⁶ R3-2.

¹⁷ R3-6, 7; TR, 209.

¹⁸ P17-7.

¹⁹ TR, 246.

²⁰ P17-7.

²¹ R3-8.

²² R3-15.

²³ R3-3.

²⁴ *Id.*

Student's ***.²⁶ The ARD committee determined that Student's *** should mainly consist of access to the general education curriculum and ***.²⁷ The ARD committee did not feel circumstances existed yet for referring parent ***.²⁸ The ARD committee also recommended Student receive cooking instruction to facilitate Student's goal of ***.²⁹

18. Student is currently working on grade-level TEKS in a general education setting for all Student's classes, with an inclusion model for Student's core classes, and passing all classes.
19. In ***, Student is completing grade level work and keeping up with the other students in the class.³⁰ Student is also able to read grade-level material in *** class.³¹ Student is not afraid to ask for help when Student requires it in ***.³² ***,” and is able to read grade-level material in *** class.³³
20. In ***, Student receives specific special education accommodations tailored to Student's needs such as chunking, ***, the use of highlighting, ***.³⁴ With the accommodations in place, Student is able to read and make progress on grade-level material.³⁵
21. In ***, there is a special education support staff member in the classroom.³⁶ Student is able to perform grade-level work and read grade-level material with the supports that are provided and Student even ***.³⁷ Student's work does not need to be modified from grade-level work.³⁸
22. The only class right now where Student struggles is *** class, where Student has a difficult time keeping up with the work.³⁹

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ R3-4.

²⁹ *Id.*

³⁰ TR, 265.

³¹ TR, 595.

³² *Id.*

³³ TR, 664-666.

³⁴ TR, 692.

³⁵ TR, 698.

³⁶ TR, 741.

³⁷ TR, 741-742.

³⁸ TR, 749.

³⁹ R4-26.

23. In the 2016-17 school year, the *** principal *** investigated Petitioner's complaint that Student was ***.⁴⁰ After investigation, the principals concluded ***.⁴¹ ***.⁴² ***.⁴³
24. Student is well-behaved both at home and at school and Student's behavior does not impede Student's learning or the learning of Student's peers.⁴⁴
25. Parents have attended every ARD committee meeting since Student was first eligible for special education and related services in 2013.⁴⁵ At ARD meetings, they are given an opportunity to ask questions and collaborate with the ARD committee. Parent often has difficulty understanding what is going on at ARD meetings.⁴⁶ When Parent does have difficulty understanding and asks for clarification, the school does its best to simplify its explanations.⁴⁷ Parent had indicated agreement with every ARD committee decision at the conclusion of every ARD meeting prior to the 2017-18 school year.⁴⁸
26. Student has missed approximately *** school days each school year due to absences, which is above average but also has not detracted from Student making progress in the general education curriculum.⁴⁹
27. Since the beginning of the 2016-17 school year, Student's testing shows Student has made a year's worth of educational progress.⁵⁰
28. At the end of the 2016-17 school year, Student *** with no modifications made to the exam itself.⁵¹ While Student had accommodations, no one read the exam to Student and Student did all the reading comprehension work ***self.⁵²

VI. STATUTE OF LIMITATIONS

⁴⁰ TR, 764-766.

⁴¹ *Id.*

⁴² TR, 766.

⁴³ TR, 766-67.

⁴⁴ TR, 570.

⁴⁵ TR, 557.

⁴⁶ TR, 545.

⁴⁷ TR, 543-45.

⁴⁸ TR, 546.

⁴⁹ TR, 921-22.

⁵⁰ R9-1; TR, 931; TR, 734.

⁵¹ TR, 714.

⁵² TR, 784.

A. General Rule and Exceptions

Petitioner filed a Request for an Impartial Due Process Hearing on August 8, 2017. In Texas, the Petitioner must request a hearing within one year of the date Petitioner “knew or should have known” about the alleged action that serves as the basis for the request. 19 Tex. Admin. Code § 89.1151(c). The one year statute of limitations rule does not apply to a parent if the parent was prevented from filing a due process complaint due to:

- (1) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or
- (2) The school district’s withholding of information from the parent that it was required to provide under IDEA. 19 Tex. Admin. Code § 89.1151(d).

The IDEA limitations period “is not subject to equitable tolling.” *Wood v Katy Independent School District*, 163 F.Supp.3d 396, 409 (S.D. Tex. Sep. 30, 2015). Parents bear the burden to establish an exception to the one year limitations period is met. *G.I. v. Lewisville Ind. Sch. Dist.*, 2013 U.S. Dist. LEXIS 120156 (E.D. Tex. 2013). Petitioner raised the second exception to the statute of limitations rule. Petitioner asserts the school’s failure to provide Student with procedural safeguards when Student requested evaluations for special education and related services in 2011 and 2012 prevented Student from filing for due process in a timely manner.

B. Withholding Exception

Petitioner claims that Student was prevented from filing for due process, because the District withheld procedural safeguards from Student. The withholding exception tolls the statute of limitations when a District “withholds information from the parent that it was required to disclose” if that withholding “prevented” the parent from filing a due process complaint. 19

Tex. Admin. Code § 89.1151(d)(2). Petitioner argues the District “failed to provide the parent with a copy of Student’s procedural safeguards in 2011, 2012, and 2014.”⁵³

Receipt of the procedural safeguards indicates the parent “knew or should have known” of the alleged action that serves as the basis for the request. *El Paso Independent School Dist. v Richard R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. Jul. 14, 2008) (“When a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations for IDEA violations commence without disturbance. Regardless of whether parents later examine the text of these safeguards to acquire actual knowledge, that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA”).

Parent first received the procedural safeguards at an ARD committee meeting on May ***, 2013. Because Student received the procedural safeguards on that date, Petitioner “knew or should have known,” as of May ***, 2013, of any alleged action that could serve as the basis of a request for due process. Student had until May ***, 2014 to file a request for a due process hearing for any actions that had occurred prior to May ***, 2013, including the District’s refusing requests to evaluate Student for special education and related services in 2011 and 2012 and failure to provide procedural safeguards prior to May ***, 2013.

Petitioner additionally asserts the school changed Student’s placement in 2014 without providing prior written notice and procedural safeguards to the parent. Petitioner has received procedural safeguards at least one time each school year since the 2012-13 school year. Because Petitioner has received procedural safeguards every school year since the 2012-13 school year, any claim from 2014 also falls outside the statute of limitations period. Petitioner has had knowledge of any “alleged action” since May ***, 2013. Since May ***, 2013, Student has only had a one year period in which to file a request for a due process hearing for any alleged violations of IDEA. See, *Id.*

C. Conclusion

⁵³ P’s Closing Argument, at 31.

After review of the law, the current record, and the arguments of the Parties, the Hearing Officer finds Petitioner did not meet Petitioner's burden of proving the District withheld information as an exception to the one year statute of limitations. The record shows the District provided Petitioner with procedural safeguards at least one time per year since the 2012-13 school year. Therefore, the one year statute of limitations applies to this case and Petitioner's claims are limited only to those that arose after August 8, 2016.

VII. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure all children with disabilities have available to them a 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 District has a duty to provide FAPE to all children with disabilities ages 3-21 who are enrolled in the District. *34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a) (3)*.

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

B. IEP

In meeting the obligation to provide FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement,

program modifications, supports for school personnel, designated staff to provide the services, and the duration and frequency of the services and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a).

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁵⁴ *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 District was obligated to provide Student with a FAPE during the 2016-2017 school year *and* to offer a program that is reasonably calculated to provide Student with the requisite educational benefit for the upcoming 2017-2018 school year. The burden of proof in this case is on Petitioner to show the school did not do so. *Id.*

D. IEP Goals and Objectives

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 committee is also required to review, at least annually, the student's IEP, and make any revisions needed to address lack of expected progress or on the basis of any re-evaluations, information provided by parents, or the student's anticipated needs. 34 C.F.R. 300.324(b)(1).

E. FAPE

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

- The program is individualized on the basis of the student's assessment and

⁵⁴ 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).

performance;

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

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

1. Individualized on the Basis of Assessment and Performance

First, there are aspects of the IEP that are not individualized. Student’s goals simply track some of the Texas Essential Knowledge Skill (TEKS) for Student’s grade. Student does not have a single goal in Student’s IEP that is not a verbatim copy of what appears in the TEKS. In several cases, the goals apply to TEKS from a prior grade level which are no longer relevant. Grade level TEKS are appropriate goals for Student based on Student’s performance, but the District does not appropriately determine which TEKS Student should work toward.

Additionally, the Present Levels of Academic Achievement and Functional Performance (PLAAFPs) are simply a restatement of Student’s grades. PLAAFPs are supposed to include a statement of how the child’s disability affects the child’s involvement and progress in the general education curriculum. 34 C.F.R. 300.320(a)(1)(i). Even the director of the special education cooperative that serves the District admitted the PLAAFPs were not “well documented.”⁵⁵

In spite of those issues with the IEP, the District does individualize the program itself to

⁵⁵ TR, 153-54.

Student's performance. Aides and teachers frequently work with Student one-on-one in class to ensure Student understands concepts. Student's accommodations and modifications are individualized based on what works best for Student in the classroom. Consequently, Student makes more than *de minimis* progress in general education classes with the accommodations and modifications Student has in place.

2. Least Restrictive Environment

Second, the evidence showed Student is educated in Student's least restrictive environment. Analyzing the LRE prong of the *Michael F.* test requires that the Hearing Officer ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1048 (5th Cir. 1989). A student must be educated "to the maximum extent appropriate" with peers who do not have disabilities. 34 C.F.R. § 300.114(a)(2)(i). Removing a student from general education classes should occur "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." 34 C.F.R. § 300.114(a)(2)(ii).

Student is in all general education classes and is thriving in that environment. Student is making progress toward grade level TEKS with appropriate accommodations and modifications in place. Petitioner proposed pulling Student out of Student's general education environment for part of the day to review remedial concepts in a more restrictive setting.⁵⁶ The evidence, however, indicates Student is making progress in general education classes. Student can be educated with peers without disabilities satisfactorily without needing to be removed.

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

Third, the evidence showed the District is coordinating with the Parents and key stakeholders in a valuable and collaborative manner. School districts must notify parents early

⁵⁶ TR, 427.

of upcoming meetings and schedule meetings at an agreeable time and place. 34 C.F.R. 300.322(a). The District is fulfilling that obligation. Parent has attended every ARD meeting and been a key participant. Student frequently asks questions and the District does its best to answer those questions.

4. Academic and Non-Academic Benefits

Fourth, the evidence shows Student is receiving requisite academic and non-academic benefits from Student's program. Academically, Student is making progress. Student made one year's academic progress during the 2016-17 school year. Student is passing all Student's classes and is well in relation to Student's peers. ***. Non-academically, Student has made friends and is well-liked by Student's teachers and classmates. Student enjoys being in Student's classes and likes to joke around with other students in an appropriate way. Student also participates in *** other school activities.

5. Conclusion

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 his unique circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017). Furthermore, a school district is not required to provide Student with the best possible education. Student does not need to improve in every academic and non-academic area to receive an educational benefit. The issue is not whether the school district could have done more. Instead, the inquiry is whether Student received an educational benefit. *Houston Ind. Sch. Dist. v. V.P.*, 582 F. 2d 576, 590 (5th Cir. 2009).

The evidence showed Student received more than a *de minimus* educational benefit from the program provided given Student's unique circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist.*, *supra*. While the District in this case could do a better job individualizing aspects of Student's IEP, the District is providing Student with meaningful educational benefit when the *Michael F.* factors are analyzed all together. Student is progressing toward grade-level TEKS in

Student’s LRE with supports and accommodations in place. The Student is making more than *de minimis* educational progress in a general education setting with parents who are involved in decision making for the Student. Student is receiving FAPE from the District.

F. ***

1. * Rules Under the IDEA**

The IDEA requires a set of *** be included in the first IEP in effect when a student *** unless state law provides otherwise. ***. In Texas, ***. ***. The IEP must include appropriate, measureable *** goals based upon age appropriate *** assessments related ***. ***. The IEP must also include the ***, ***, the student needs to reach those goals. ***. The IDEA defines *** as ***. ***.

*** must be based on the individual student’s needs, taking into account the student’s strengths, ***. *** may include instruction, related services, ***, the development of *** objectives, and ***. ***. *** may be special education if provided as specially designed instruction or a related service if required to assist the student to benefit from special education. ***.

2. State Law

Under state law, the ARD must consider, and where appropriate, address the following in the student’s IEP:

- ***;
- ***;
- ***;
- ***;
- ***;
- ***;

- ***; and

- ***.

3. ***

Examining those factors under Texas law, the evidence showed the District began *** when Student reached *** and Student *** along with Student's mother. The District conducted an assessment to determine what services could be appropriate for Student. Student is making progress on grade-level TEKS and the ARD committee indicated that the best way for Student to reach Student's goal *** would be participating in the general education curriculum ***.⁵⁷ *** and the ARD committee suggested strategies for facilitating that goal. The District also determined it was not yet appropriate ***.

In summary, Student's *** meets all criteria required under federal and state law. At this time, with Student's *** success in the general education curriculum, Student is working toward a realistic goal ***. Student's *** are appropriate under state and federal law.

G. ***

Petitioner claims Student failed to make progress and was anxious about attending school, because Student was *** and the District did not do enough to ***. Petitioners allege Student was denied FAPE as a result of ***.

A school district's failure to *** may constitute a denial of a FAPE in certain circumstances. ***; ***.

*** may constitute a denial of a FAPE if school personnel were deliberately indifferent to, or failed to take reasonable steps, to prevent *** that adversely affects or results in the regression of educational benefit or substantially restricts the student with a disability from accessing educational

⁵⁷ R3-3.

opportunities. ***.

The *** need not be outrageous, but it must be sufficiently severe, persistent, or pervasive that it creates a hostile environment for the student with a disability. It is not necessary that Petitioner show *** prevented all opportunity for an appropriate education but only that it is likely to affect the opportunity of the student for an appropriate education. ***.

As the *** standard applies to the present case, the District was not “deliberately indifferent” and took reasonable steps to prevent the ***. As soon as the District was made aware ***, the District launched an investigation, ***. When it became clear the differences were irreconcilable, the District ***. Student was able to make more than *de minimis* progress during the school year and it is unclear that Student’s progress was hindered in any way by ***. The District took “reasonable steps” to resolve the issue ***.”

It appears from the record that *** did not prevent Student from receiving a FAPE. It also appears that the school took appropriate action at all relevant times. Therefore, Student was not denied a FAPE as a result of ***.

H. Reevaluation

Petitioner asserts the District failed to conduct timely re-evaluations of Student and failed to conduct evaluations in all areas of suspected need. Evaluations must be conducted at least once every three years. 34 C.F.R. § 300.303(b)(2). The reevaluation in this case was conducted and adopted by the ARD committee on January ***, 2016. That date was less than three years after the initial evaluation was conducted and adopted by the ARD committee. It was thus timely.

Petitioner asserts that, because the reevaluation consisted only of a REED, it did not account for all areas of suspected need. IDEA distinguishes between initial evaluations and reevaluations. In a reevaluation, a school district is required to review existing evaluation data and, on the basis of that review, determine whether additional evaluation data are required. 34

C.F.R. § 34.305(a)(1-2). The REED itself indicated no further areas of evaluation were needed. The District felt Student continued to qualify as a student with ***. It did not suspect Student had additional disabilities or areas of need that needed to be considered.

The District did not feel Student required additional evaluation for assistive technology or related services, because Student was making progress toward grade-level TEKS. An evaluation's primary role is to contribute to the development of an IEP that provides educational benefit to the student. *Harris v. District of Columbia*, 561 F.Supp.2d 63, 67 (D.D.C. 2008). In this case, the District has an IEP that identifies Student as eligible for special education and related services as a student with *** and provides educational benefit to Student. An evaluation beyond the REED is not required under IDEA to provide a FAPE to Student.

VIII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993).
2. Petitioner did not meet Petitioner's burden of demonstrating that an exception should be made to the Statute of Limitations. *El Paso Independent School Dist. v Richard R.*, 567 F. Supp. 2d 918, 945 (W.D. Tex. Jul. 14, 2008). Therefore, Petitioner's claims are limited solely to those that arose after August 8, 2016.
3. Petitioner did not meet Petitioner's burden of proving Respondent failed to provide Student with a FAPE during the 2016-2017 school year. *Schaffer v. Weast, supra*; *Andrew F. v. Douglas Cty. Sch. Dist. RE-1, supra*; *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., supra*; 34 C.F.R. §§ 300.1, 300.17.
4. Petitioner did not meet Petitioner's burden of demonstrating the District's *** failed to meet the standards of federal and state law. ***.
5. Petitioner did not meet Petitioner's burden of demonstrating the District did not timely re-evaluate Student in all areas of suspected need. 34 C.F.R. § 300.303(b)(2).
6. Petitioner did not meet Petitioner's burden of proving entitlement to any of its requested relief. *Schaffer v. Weast, supra*; *Andrew F. v. Douglas Cty. Sch. Dist., supra*; *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., supra*.

IX. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**. All other requests for relief not specifically stated in these Orders are hereby **DENIED**.

SIGNED March 12, 2018



Ian Spechler
Special Education Hearing Officer
For the State of Texas

X. 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).