

STUDENT, <i>B/N/F</i> PARENT,	§	BEFORE A SPECIAL EDUCATION
	§	
Student,	§	
	§	
V.	§	HEARING OFFICER
	§	
HALLSVILLE INDEPENDENT SCHOOL DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

I. STATEMENT OF THE CASE

Student, STUDENT, *b/n/f* PARENT, (“Petitioner” or “Student”), filed a Request for Due Process Hearing (“Complaint”) with the Texas Education Agency (“TEA”), requesting a Due Process Hearing pursuant to the Individuals With Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C. §1400 *et. seq.* Student asserted limited issues in Student’s Complaint against Hallsville Independent School District (“Respondent” or “District” or “HISD”), alleging that the District denied Student a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”) based upon the following violations of IDEA occurring from May 23, 2018, to May 23, 2019:

- (1) Respondent failed to develop an appropriate Individualized Education Program (“IEP”) for Student by
 - (a) failing to develop an IEP that would provide Student with both academic and non-academic benefits;
 - (b) failing to develop a Behavior Intervention Plan (“BIP”) that ensured Student’s safety and that of others.

Student requests the following relief:

- (1) Residential placement for one calendar year at a facility that is better equipped to address Student’s Autism (“Au”) and severe behaviors.

II. PROCEDURAL HISTORY

Student filed Student's Complaint against the District on May 23, 2019. On that same day, TEA assigned this matter to the undersigned Special Education Hearing Officer ("SEHO") and sent a copy of the Complaint and Notice of Filing to Respondent. Also on May 23, 2019, the undersigned sent the Initial Scheduling Order to the Parties, stating that the prehearing telephone conference ("PHC") would convene on June 18, 2019, the Due Process Hearing would take place on July 11, 2019, and the Decision would issue on, or before, July 27, 2019.

On June 1, 2019, Respondent filed and served its Answer to Student's Request for Special Education Hearing and Required Notice.

On June 7, 2019, Respondent filed a Motion for Continuance, basing the request on delays in setting the case for mediation as well as the absence of District witnesses, who are not on contract during summer. Student filed an objection to the continuance request, arguing that the Student's escalating behaviors were dangerous to ***self and Student's family.

On June 13, 2019, the Parties convened for an interim telephone conference to discuss the continuance request. In attendance were the following: (1) Ms. Deborah Holum, Student's non-attorney advocate; (2) Ms. Holly Wardell and Ms. Amy Foster, Respondent's counsel; (3) Ms. ***, Respondent's Special Education Director; (4) Ms. ***, Principal of ***; (5) Ms. ***, Respondent's Executive Director of Curriculum and Instruction; (6) the undersigned Hearing Officer; and (7) the court reporter, who made a record of the telephone conference. The Parties agreed to conduct a mediation or Resolution Session on June 27, 2019, and to convene for the PHC on July 1, 2019, as scheduled.

On July 1, 2019, the Parties convened the PHC to discuss the status of settlement and/or the need for a continuance of the July 22, 2019, Due Process Hearing. In attendance were the following: (1) Ms. Deborah Holum, Student's non-attorney advocate; (2) Ms. Holly Wardell, Respondent's counsel; (3) Ms. ***, Respondent's Special Education Director; (4) Ms. ***, Respondent's Licensed Specialist in School Psychology ("LSSP"); (5) Ms. ***, Respondent's Executive Director of Curriculum and Instruction; (6) the undersigned Hearing Officer; and (7) the court reporter, who made a record of the telephone conference.

The Parties reported that they were unable to resolve their issues at the June 27, 2019, Resolution Session.

Student agreed to a brief continuance of the Due Process Hearing. Finding good cause, the undersigned granted Respondent's Motion for Continuance to the Parties' agreed extension of the deadlines for the Disclosure deadline; the Due Process Hearing; and the Decision deadline. The Disclosure Deadline was extended to July 31, 2019; the Due Process Hearing was continued to August 8-9, 2019; and the Decision Deadline was extended to August 26, 2019.

Both parties served and filed their Disclosures on the due date of July 31, 2019. Respondent included Student in its witness designations. Student filed a Motion to Suppress or Block [Student's] Testimony, arguing that (1) Student does not have sufficient intellect to be a witness; (2) Student would not understand the legal ramifications of giving Student's Oath; (3) Student's behavior may include criminal

acts; as such, Student has the constitutional right not to self-incriminate; and (4) IDEA guarantees that the Parent has the right to exclude the Student from attending the Due Process Hearing.

On August 5, 2019, Respondent filed its Response to Student's Motion to Suppress or Block Witness Testimony. Respondent argued that (1) Student's reliance on a Motion to Suppress is not the proper mechanism for objecting to Student's testimony; (2) Student's motion is not ripe, *i.e.*, Respondent has only listed Student's name as a possible witness; it has not called Student as a witness; and (3) per 34 C.F.R. §300.512 (a)(2), Respondent has the absolute right to present evidence and witnesses at the Due Process Hearing.

On August 6, 2019, the undersigned issued Order No. 4, finding that Student's Parent maintained the right to exclude the testimony of Student at the Due Process Hearing. 34 C.F.R. § 300.512(c).

The Due Process Hearing convened on August 8-9, 2019, at HISD's Administration Building, and was closed to the public. Both Parties introduced documentary evidence and called several witnesses who were subject to cross-examination. During the hearing, Student was represented by Student's advocates, Deborah and Michael Holum, and Student's Parent. Respondent was represented by counsel, Ms. Holly Wardell and Ms. Amy Foster. Also in attendance representing Respondent were Ms. ***, HISD's Special Education Director, and Ms. ***, HISD's LSSP.

The Parties concluded their presentations on August 9, 2019. The Parties requested a continuance of the Decision Deadline (August 26, 2019) in order to receive and review the record from the Court Reporter and prepare their written closing arguments prior to the issuance of the Decision. Finding good cause, the undersigned granted the request and the Parties agreed to file and serve their closing arguments on, or before, **September 13, 2019**, and to extend the Decision Deadline to **September 25, 2019**.

III. FINDINGS OF FACT

1. HISD is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student resides within HISD's jurisdiction with Student's Mother ***. Student just completed *** (***) in May 2019. (R.2.1) Student qualifies for special education and related services as a student with Autism ("AU") and Other Health Impairment ("OHI"), based upon Attention Deficit Hyperactivity Disorder ("ADHD"). (R.2.1).
3. HISD is responsible for providing Student with an appropriate education under IDEA and its federal and state implementing statutes.
4. Student has attended school in HISD since Student was ***. Initially, HISD placed Student in *** ("****") with a staff-to-student ratio of ***. (T.2.805.21-22). Because of Student's physical aggression toward ***self and others, Student was not successful in this environment. Multiple times per week, Student engaged in such aggressive behaviors, as ***. (T.2.805.23-25; T.2.806.1-5, 14-18; 23-24; T.2.807.1). Ultimately, Student required a much more restrictive staff-to-student ratio of ***.

(T.2.806.3-5). Student required that level of intensive staff support through ***, during such time Respondent constantly modified Student's educational program to address Student's behaviors. (T.2.806.6-8; T.2.807.8-9).

School Year 2017-18/ARDC Meeting May 2018:

5. Student's most recent Full Individual Evaluation ("FIE") is dated May ***, 2017. (R.15). Student's Intelligence Quotient ("IQ") registered Student at an overall cognitive ability in the below-average range. (T.2.801.18). Staff does not believe that Student's IQ score reflects Student's true abilities. (T.2.802.25). Student performs grade-level work. (T.1.121.24-25; 122.1-3; 180.2-4; 366.22-25.367.1).
6. Student's autism creates many struggles with certain activities, including large unstructured classes such as *** ("***"). (T.2.804.9-25). Student has struggled with *** since ***. In August 2017, Student's ARDC restructured Student's *** time from *** to a general education ***. (R.7.2,8). Since that time, HISD has provided Student with an alternative activity for ***. (T.2.804.9-25). HISD provided Student ***, which is a *** that allows Student to fulfill *** requirements. (T.1.375.14-20). Student's BehavioralAssistant broke up Student's *** time on *** throughout the school day.
7. Student's testing indicates that Student can attend to a task for *** minutes. (T.2.677.9-16). Student can become overloaded due to Student's sensory differences, which leads to avoidance and frustration. (T.2.678.2-20; R.15.2). As such, Student's ARDC developed a target for Student to attend class for *** minutes. (R.8.23).
8. Student likewise has sensitivities to noise and changes in routine, which can lead to overstimulation and the need to relocate to an environment with reduced auditory and visual stimuli. (R.22.1). Student's ARDC met in April 2018 to address Student's elopement behavior. (R.4). The ARDC, including the Parent, agreed to the Behavior Intervention Plan ("BIP") amendment, which required administration and support staff to be notified immediately; Student chose a safe word, "***," to alert teachers that Student was becoming overwhelmed or anxious. When Student said Student's safe word, staff would immediately escort Student to the behavior redirection room, where Student would stay until Student requested to return to class. (R.4.3).
9. HISD provided Student with *** Behavioral Assistants to help increase positive behaviors and decrease negative behaviors. (T.2.669.3-8).
10. Student's ARDC met on May ***, 2018, to conduct an annual review of Student's educational programming and to develop an IEP for the 2018-19 school year. (R.3). Student's Parent and advocates attended and joined the ARDC in agreeing to Student's 2018-19 IEP. (R.3.28; 3.45).
11. In reviewing Student's behavior during the 2017-18 school year, the ARDC noted that Student could not hold Student's behavior in check for more than *** days. Student had a history of aggression towards others, such ***. Student likewise had a history of *** behaviors, such as ***. (R.3.42). The ARDC noted that notwithstanding these negative behaviors, Student's *** behaviors had diminished with only three (3) significant episodes. During the prior 2016-17 school year, Student exhibited *** behavior monthly. (R.3.44). At the time of the May 2018 ARDC meeting,

Student's behavior had appropriately improved as shown in Student's abilities of sharing Student's feelings and utilizing Student's safe word, "****," when Student needed a break. (R.3.44).

12. The ARDC reviewed and modified Student's BIP, which targeted Student's elopement, noncompliance, physical aggression ***, and *** behaviors. (R.3.42). Student's BIP contained a crisis plan to address elopement, for line-of-sight supervision, communication among the staff, and notification of the Parent. (R.3.44). The school's *** would patrol the perimeter and be responsible for notifying outside agencies. If Student was off-campus, Respondent notified Hallsville police. All recommendations from Student's advocates were incorporated into the BIP. (R.3.44).
13. Student's ARDC placed Student in *** for school year 2018-19 in a combination of settings: ***, ***, and *** were in general education with in-class support; *** was in a combination of general and special education with co-teachers; and *** ("****") was in a ***. (R.3.4).
14. Student's IEP included several accommodations: accommodated grading,¹ including cooling-off periods; frequent breaks; shortened assignments; modified assignments and tests; oral administration of tests; positive reinforcement; spelling assistance; supervision during transitions; preferential seating; and supplementary aides. (R.3.4-7).

School Year 2018-19:

15. Student's 2018-19 IEP and BIP were implemented Fall 2018. The frequency and severity of *** reduced, with this goal's being mastered by the end of the school year. Physical aggression *** was also reduced both in frequency and severity. As a result of this, restraints reduced from *** during ***, to *** in *** grade, to only *** during the 2018-19 school year. Of these ***, *** were during Fall 2018 and *** occurred in Spring 2019.
16. Between August 2018 and April ***, 2019, Student had *** episodes of elopement off-campus. (R.22.2). *** attempt was made in September 2018 and *** episodes occurred in early February during a period of heightened stress. *** episodes occurred when Student was in an agitated state and unable to calm.
17. ***. Student was exhibiting high stress during this time because Student's ***. The staff met to discuss the incident. HISD brought in a certified trainer in Crisis Prevention Intervention ("CPI") to work with staff on verbal de-escalation techniques and to go back over the techniques. They role-played; they modeled verbal de-escalation techniques; they also had the CPI trainer specifically tailor restraints for students of a ***. This training focused on de-escalation procedures. (T.2.690.22-25; 691.6-25; 692.1-25; 693.15-17).
18. Student's elopement attempts intensified in late April 2019. These elopements were markedly different from previous elopements because Student remained verbal and calm while in the process of leaving school. Simply, Student wanted to go home ***. (T.2.700.8-12). At Student's May 2019 ARDC meeting, Student's ARDC created new positive behavioral supports to target and reduce the newly occurring behavior. (R.22.2).

¹ Teachers were (1) to grade only completed work; (2) to not allow homework to negatively affect grades; (3) to reassess failed skills for mastery using verbal/hands-on and/or emphasis on major points; and (4) to test only those points.

19. Student's 2018-19 IEP provided for flexibility in environments with a thirty (30)-minute goal for physical attendance inside the classroom per period. Student's BIP goals targeted a reduction in noncompliance, ***, and aggression while increasing coping skills. (R.22.1). If Student stayed in class for thirty (30) minutes, Student was allowed to engage in a preferred activity. (T.2.669.12-25).
20. Student learned to ask for breaks as a strategy to improve Student's self-regulation. Student also learned to use cool-down walks, another strategy for self-regulation. Cool-down walks have been a part of Student's plan for a very long time and are included in Student's scheduled and unscheduled sensory breaks that Student's Occupational Therapist ("OT") worked on with the ARDC to develop prior to the 2018-19 school year. Cool-down walks were specifically recommended as a sensory strategy for Student. (T.2.667.2-25; 668.9-11; 680.12-18).
21. During the 2018-19 school year, Student became more verbal in expressing Student's emotions. This gave school officials many opportunities to handle de-escalations in a verbal manner, while also teaching Student skills Student needs to self-regulate. Student responds very well to positive verbalizations and affirmation. Student wants positive affirmation. One of the verbal redirection techniques that is most effective with Student is reminding Student of when Student previously did well in a similar situation. (T.2.670.12-22; 671.3-11).
22. Staff is able to recognize early warning signs when Student is becoming agitated. *Id.* at L. 19-24. Student's signs are that Student ***. When the staff observes these signs, they engage in facilitated problem-solving,² which promotes independence in problem-solving. (T.2.672.1-25; 673.1-17).
23. Staff provided social skills training throughout the day as opportunities arose. The staff conducted structured social skills training at least three (3) times a week. The staff worked on social skills in the environment in which they want social skills to occur, including before school, after school, lunch, and during *** time. (T.1.323.24-25; 324.1-14) (T.2.682.6-13; 685.1-5).
24. Student's staff collected extensive data regarding Student's behaviors and the use of behavioral supports throughout the school year. The formatting of the data collection was refined during the school year. (T.2.656.8-19; 661.11-14).
25. The staff used a reward system with Student. The staff was working on building Student's tolerance to attend thirty (30) minutes of each class. If Student met this goal, Student would be assigned points toward earning a preferred activity. When Student accumulated a certain number of points, Student was granted additional privileges. *** were given more weight in the token economy system than were ***. (T.2.661.11-22; 664.5-23).
26. Student mastered all of Student's IEP goals during the 2018-19 school year. (R.2.9-16). Student maintained passing grades in Student's classes. (R.22.1).
27. Student's teachers concurred that Student was generally well-behaved and completed Student's

² Facilitated problem-solving is a method of guiding individuals to resolve their issues. It occurs between the individual who has the problem and the individual with the authority to resolve the problem.

- work. Student's *** teacher described Student as an excellent student who made all A's in her class; she had no behavior problems; Student listened carefully, did Student's work; worked on projects. (T.2.550.3-4; 8-9; 13-21; 24-25; 548.15-17) (R.19.541.20-24). Student's *** teacher proposed that Student could qualify for a *** ("***") in ***.
28. Student's *** is also a special education teacher. She transported Student to and from school. She noted that Student was never a problem on the bus, despite the fact that many morning drives took one (1) or more hours and the afternoon bus ride was twenty (20) to thirty-five (35) minutes. Student had no trouble getting on the bus at Student's home. When picked up in the morning, Student turned off the light, shut the door and locked it. When she dropped Student off at Student's home, Student went in on Student's own. (T.2.563.12-14; 565.13-23; 566.1-2, 7-11; 567.12-14; 574.19-25; 575.1-2; 581.11-13).
29. Student had *** paraprofessional Behavioral Assistants, ***, who worked with Student during the 2018-19 school year. Student's *** Behavioral Assistant greeted Student at school when Student got off the bus and Student spent *** minutes of the school day with her. She accompanied Student to ***, *** (***), and ***. (T.2.585.18-23; 589.17-20; 590.2-6; 593.10). She worked with Student on remaining in class to receive the instruction from the teachers before leaving to complete individual work in a quieter place. (T.2.597.1-15). Student's agitation in the academic classrooms decreased by the end of the year; Student completed Student's assignments and tests on Student's own with little assistance; Student knew and followed the routine for the behavior program. (T.2.589.18-20, 24-25).
30. Student's *** Behavioral Assistant found Student to be sweet; Student liked to talk to her. When stressed, Student liked to walk and talk with her. She found that Student had compassion for others. (T.2.589.19-25; 595.1-11).
31. Student's *** Behavioral Assistant had very little trouble redirecting Student when Student engaged in *** behavior. Data collected regarding *** behavior established that Student's *** behavior decreased during the 2018-19 school year. (T.2.596.13-24) (R.2.51). Student has attended school in HISD since ***. Student is familiar with the other students, who speak to Student in the hall. Student's providers help Student daily in social skills training relating to interaction and responding to Student's classmates. In small settings, Student will carry on conversations with other students. (T.2.590.11-22; 595.17-25). Student has friends at school. (T.1.135.2-4, 5-8; 284.10-12) (T.2.567.9-11; 591.17-24; 817.12-13).
32. Student had *** paraprofessional Behavioral Assistant, ***, and who worked with Student during the 2017-2018 and 2018-19 school years. He used facilitated problem-solving with Student daily. He explained that Student does not do well around other students who have significant behavioral disorders, that Student feeds off of the behaviors. (T.1.308.13-14; 370.1-24; 384.2-15). This Behavioral Assistant noted that Student's behavior had improved from ***. Student remained in class more; Student focused on Student's work more; Student was more social with the other students; and Student improved Student's self-regulation skills. (T.1.385.12-25; 386.1-6).
33. In February 2019, ***, which had a negative effect. (T.2.591.20-25; 592.1-2). ***. ***. ***. (T.1.391.3-22); (T.2.p.690.22-25; 691.1-5; 694.14-17).

34. Despite Student's difficulty with attending to tasks and tolerating entire general education class periods, Student did was given grade-level work and progressed in Student's ability to attend general education classes. (T.I.121.24-25; 122.1-3; 123.17-22; 180.2-4; 366.22-25; 367.1).
35. Student had difficulty in staying in unstructured classes, such as ***, and loud settings, such as ***. Student's May 2019 report noted grades for both *** and ***. However, the document did not explain the reasons why this appeared to be misleading. In 2017, Student's ARDC restructured Student's *** time from *** to a general education ***. (R.7.2,8). Since that time, HISD has provided Student with an alternative activity for ***. (T.2.804.9-25). HISD provided Student ****. (T.1.375.14-20). Student's Behavior Assistant broke up Student's *** time *** throughout the school day.
36. Student's grades in *** were not included in Student's *** teacher's grade book. This was an error in record-keeping that was clarified in the hearing and does not reflect Student's work completion. Contrary to the *** teacher's records, Student turned in Student's assignments with the majority of these assignments completed. (R.2.65). The *** Behavioral Assistant who worked on *** projects with Student testified that Student completed several of the assignments not reflected in the grade book. Because the *** class had several students and was loud, the *** teacher prepared instructions and supplies for Student in advance of class, which allowed Student to leave the class and to work on the project in a quieter setting. Some of Student's ***. (T.2.607.22-25; 608.1-25; 635.3-24).
37. Student's prior Functional Behavioral Assessment ("FBA") was dated April 2017. On April ***, 2019, HISD conducted another FBA. (R.2.23-25). The sources of behavior included: discipline referrals; attendance records; grade reports; information provided by the Parent and Student; classroom observations made by a special education teacher and an LSSP; interviews with Student's Behavioral Assistants and a special education teacher; and behavioral logs and data.
38. Problem behaviors observed included physical aggression, *** behavior, and elopement. ***. ***. Student engaged in *** behavior by ***. ***. As of the date of the FBA, Student had ***. (R.2.23). Student's restraints had reduced from ***.

Parent's Involvement in the 2018-2019 School Year:

39. In prior years, Student's staff and Student's Parent had a more open communication level that kept everyone informed about Student's behavior and academic work. In school year 2017-18, Student's Parent and staff called several ARDC meetings to tweak Student's IEP and BIP. This resulted in agreement by all stakeholders in the May 2018, ARDC meeting.
40. This all changed during the 2018-19 school year. Student's Parent had the opportunity to access the school's Skyward program online, which included information such as report cards, progress reports, and emails from teachers. (T.2.487.12-17; 809.6-25). Student's Parent was familiar with Skyward and had used it to look at Student's grades and attendance. During the 2018-19 school year, Student's Parent did not log in to the Skyward program until May ***, 2019. (T.2.808.23-25). As such, Student's Parent did not view the approximately *** emails sent to her, *** of which were specific from a teacher to the Parent. The remainder of the emails were automatically generated

reports that were sent to every student, such as report cards and progress reports. (T.2.810.6-11).

41. Student's Parent did not request any conferences with Student's teachers during this school year. (T.2.487.24-25; 488.1-3). She helped Student with Student's homework and checked Student's back pack.
42. Respondent offers parents of children with autism the opportunity to work one-on-one with an outside Autism Consultant about specific issues at home or at school. Respondent sent Student's Parent two (2) letters notifying her of opportunities to meet with this consultant on October ***, 2018, and March ***, 2019. Student's Parent neither responded to these letters nor availed herself of this service. (T.2.810.20-25; 811.1-17 (R.24.14-15).
43. On March ***, 2019, the Parent emailed her advocate about Student's *** in February 2019. She was concerned that the Assistant might sue her for Student's actions and she was willing to pay for his medical bills. (R.30.1). On the advocate's advice, Student's Parent did not discuss the incident with the Behavioral Assistant.
44. On March ***, 2019, Student's Parent alerted Student's advocate about her placement of Student in ***. (P.17). The Parent was concerned about Student's ***. Student's Parent did not inform the school of the reasons for this placement. (T.2.438.14-16; 440.2-5; 486.21-25; 487.1-5).
45. On March ***, 2019, Respondent requested a copy of Student's *** to help coordinate Student's transition back to school. On the advice of the advocates, the Parent declined to send the *** paperwork to the District. (R.21.11) (T.2.495.10-12).
46. Student's Parent ***. (R.33.12-13). Again, the Parent failed to notify the District of the reasons for ***.
47. On April ***, 2019, Student's Parent sent an email to school staff requesting Student's placement in a residential treatment center. (P.1). Respondent's replied that the ARDC would discuss this request at Student's annual ARD meeting in May 2019.
48. On, or about, May ***, 2019, Respondent sent the Parent a transition form in preparation of moving Student ****. On advice from the advocate, the Parent failed to complete and deliver this form prior to the annual ARDC meeting.(T.2.498.1-25; 500.1-13) (R.33.1).
49. On May ***, 2019, Respondent sent the Parent an email to let her know the school had noticed changes in Student's behavior since returning from Student's ***. (R.21.1-10). The District was concerned that *** might be affecting Student's behavior. (R.32.1). On the advice of Student's advocate, the Parent did not respond to this request. (T.2.494.25; 495.1-2).
50. On May ***, 2019, Respondent emailed the Parent and asked for consent to collaborate with Student's medical providers prior to the scheduled May ***, 2019, ARDC meeting. (P.4). The Parent did not provide consent. (T.2.485.20-23). Respondent also offered to have the ARDC meeting earlier than previously scheduled. The Parent refused to reschedule the meeting. (T.2.486.1-5).

51. On May ***, 2019, Respondent sent the Parent a Parent Needs Assessment to gather information on how Student was functioning in home and in the community. (R.34.1). This document would be presented to the ARDC meeting on May ***, 2019. On advice of Student's advocate, the Parent failed to present a completed form at the meeting. (R.2.502.8-20).

The May *, 2019, ADRC Meeting:**

52. This ARDC was contentious in light of the fact that the Parent was only willing to consider Student's placement at a residential setting. The Parent and advocates did not participate collaboratively:
- a. the Special Education Director offered to facilitate a meeting with the *** ("****") to provide additional resources to Student and Student's family. (R.2.52). These services would be provided to Student and Student's family at no cost.
 - b. The Parent and advocate did not want to hear the proposed behavioral goals. (R.2.52).
 - c. The advocate did not want to review the accommodations but the Committee proceeded to discuss and revise Student's accommodations based upon Student's present needs (R.2.53).
 - d. Following a break in the meeting, the advocate requested a Prior Written Notice regarding the Parent's requested residential placement in April 2019. The District declined this request because it was premature in light of the fact that the Committee had not yet discussed Student's schedule of services, LRE, or extended services for school year 2019-20. The Committee did not get a chance to address either the transportation or autism supplements before the Parent and advocates left in protest. At that time Student's advocate presented the Committee with a copy of Student's Complaint.
53. Following the May ***, 2019, ARDC meeting, and the Parent's leaving before the meeting was over, the District attempted several times to schedule another ARDC meeting at a mutually agreeable date and time to complete its discussions:
- a. On May ***, 2019, the Special Education Director emailed the Parent a letter and invitation to complete the May ***, 2019, ARD meeting. (R.39). The Director requested mutually agreeable dates and times to reconvene the meeting. On advice of Student's advocates, the Parent declined the offer.
 - b. On May ***, 2019, the Director again emailed the parent to inquire about reconvening the ARDC started on May ***, 2019. (R.41). Again, and on the advice of Student's advocate, the Parent declined to respond to this request.

The Parent declined to meet again and did not attend the reconvening of the May ***, 2019, meeting, which occurred on May ***, 2019. (R.38; 2.52). (T.2.812.1-9).

Summer 2019:

54. On June ***, 2019, the Parent emailed the Director of Special Education requesting a copy of the

ARDC report for the meeting that began on May ***, 2019, and concluded on May ***, 2019. (R43). The Director complied with this request on June ***, 2019.

55. On June ***, 2019, the Director emailed the Parent with another offer of assistance to facilitate local community resources through the *** to address Student's elopement from, and other behaviors at, home. The Director also asked the Parent for consent for all of Student's physicians, including the physician who recommended residential placement in the May ***, 2019, ARDC meeting. (R.44).
56. The Director called ***, a local mental health authority, where she learned about the ***, which is an in-home program where clients have a case manager who comes to the home. The program has a twenty-four (24)-hour crisis intervention component. The Director provided a brochure to the Parent. The Parent showed no interest in this program. (R.47) (T.2.813.5-22).
57. On June ***, 2019, the *** Principal provided the Parent with an email from the *** Principal about "***," which is a scheduled meeting for parents of ***. (R.46). The purpose of the meeting is to review campus expectations, processes, and procedures. On advice of Student's advocate, the Parent ignored this event.
58. On July ***, 2019, the Director sent the Parent another letter. (R.47). The Director again (1) offered to facilitate a *** meeting for Student; (2) presented the Parent with a referral form and the brochure for the ***; (3) offered the services of the District's Autism Consultant; (4) requested for consent to communicate with Student's medical providers. (T.2.814.8-23).
59. On July ***, 2019, the Director sent the Parent a letter offering to have a Board-Certified Behavior Analyst ("BCBA") conduct another FBA. (R.50). The Director further offered that, after completion of the FBA, the BCBA could conduct training and follow-up data analysis with both the school staff and the Parent. The Parent did not provide consent for the FBA in response to this letter. (T.2.512.3-9).
60. At the end of July 2019, the Parent executed the consent forms for the District to communicate with the *** and ***, the residential placement the Parent requested. (T.2.819.19-25; 820.1-18). The Director attempted to contact both facilities but did not obtain a response prior to the Hearing.
61. The evidence failed to prove that Student's 2018-29 IEP and BIP were not individualized on the basis of the student's assessment and performance.
62. The evidence failed to prove that Student's 2018-19 IEP and BIP were not administered in the LRE.
63. The evidence failed to prove that Student's 2018-19 IEP and BIP were not developed in a coordinated and collaborative manner by the key stakeholders.
63. The evidence failed to prove that Student's 2018-19 IEP and BIP did not provide Student with both positive academic and nonacademic benefits.
62. Student's appropriate placement for school year 2019-20 is *** with appropriate accommodations, related services, and behavioral support. This placement is the LRE.

64. The evidence failed to prove that Student required residential placement in order for the student to receive a meaningful educational benefit; and 2) primarily orient

IV. DISCUSSION

IDEA defines FAPE as special education and related services that (1) are provided at public expense, (2) meet the standards of the state education agency, (3) include an appropriate preschool, elementary school, or secondary school education in the state involved, and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§300.320-324.

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. The Court defined “educational benefit” that is meaningful and one that provides a “basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.” *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). In a more recent opinion, the Court affirmed that the IDEA cannot, and does not, promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 998 (2017). The correct standard for providing FAPE is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress in light of the student’s individual circumstances. *Id.* at 999.

In 1997, the Fifth Circuit established a four-factor test to determine whether a school district’s IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA: (1) Is the program individualized on the basis of the student’s assessment and performance?; (2) Is the program administered in the LRE?; (3) Are the services provided in a coordinated and collaborative manner by the key stakeholders?; and (4) Does the student demonstrate both positive academic and nonacademic benefits? *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997). These factors were recently re-affirmed by the Fifth Circuit as appropriate under, and consistent with, *Endrew F. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

Petitioner’s Burden of Proof on the Issues Raised in the Complaint:

The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the Student challenging the plan. It is well-settled that a party challenging the district’s eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d at 754, 762-63 (citing *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 252 (5th Cir. 1997); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).

The party requesting the Due Process Hearing may not raise issues at the hearing that were not raised in the Complaint unless the other party agrees. 34 C.F.R. § 00.511(d).

In the instant case, Petitioner raised only one key issue in the Complaint: whether Respondent failed to develop an appropriate IEP for Student by (1) failing to develop an IEP that would provide Student with both academic and non-academic benefits; and (2) failing to develop a BIP that ensured Student's safety and that of others. The sole remedy sought by Petitioner is residential placement.

Petitioner presented a case that did not prove the FAPE issue. Rather, during the hearing the Petitioner overwhelmingly tried to prove that the District had failed to comply with, and implement, the May ^{***}, 2018, IEP and BIP. Likewise, Petitioner's Closing Brief focuses on perceived failures by the District to implement the subject IEP. The only evidence that Petitioner presented was based upon Petitioner's belief that Student's conduct and accomplishments were false, that the records showed that data did not support many of the District's claimed success. Indeed, there was no witness called to either provide testimony about the deficiency of the subject IEP or the District's failure to implement Student's program. Accordingly, and in light of the fact that the Parties did not agree to go beyond the Complaint's issues, *i.e.*, to include a new issue of failure to implement, this Decision addresses only those issues raised in Petitioner's Complaint. 34 C.F.R. §300.508(b).

MICHAEL F. FOUR-POINT FACTORS ANALYSIS:

In conducting the *Michael F.* analysis, it is clear that the IEP and BIP developed by Student's ARDC in May 2018, along with amendments, were reasonably calculated to provide Student a meaningful educational benefit under the IDEA.

Factor 1: Was the Program Individualized Based on Student's Assessments and Performance?

The subject IEP was developed in May 2018. The record is replete with evidence that the ARDC thoroughly reviewed Student's evaluations and gathered additional data to identify Student's individualized needs. The Parent and advocates attended this meeting and provided input. The IEP included a detailed statement of Student's Present Levels of Academic Achievement and Functional Performance ("PLAAFP") in accordance with 34 C.F.R. §300.320. The IEP presented specific data related to Student's present functioning in the areas of ***, ***, ***, ***, ***, ***, and ***. This data included information about Student's ability to perform certain tasks related to each area. This information was student-specific and task-specific.

The ARDC used this information to identify Student's weaknesses and to develop individualized goals in the areas of ***, ***, ***, ***, ***, ***, and ***.

Student's IEP included information about Student's individual performance on statewide assessments and individualized accommodations.

The IEP contained a comprehensive BIP, including an Autism Supplement. The ARDC completed the Autism Supplement describing Student's needs in the areas of extended educational programming, daily scheduling, in-home training, positive behavioral supports, *** planning, parent/family training support, staff-to-student ratios, communication interventions, social skills supports, staff supports, and research-based strategies in accordance.

Factor 2: Was the Program Delivered in the LRE?

It is well-settled that a student's IEP must be administered in the least restrictive environment. This means that HISD is required to educate Student with others who are nondisabled to the maximum extent appropriate. 34 C.F.R. §300.114(a)(2). Likewise, HISD is required to offer a continuum of placements to address the needs of students with disabilities. 34 C.F.R. §300.115. In *Endrew F.*, the Supreme Court reiterated the IDEA's long-standing preference that students be "fully integrated into the regular classroom." *Endrew F.* at 1000.

During the 2018-19 school year, Student received the majority of Student's instruction in general education classes when Student's autism allowed Student to tolerate the size and noise. Student attended general education for ***, ***, and ***; Student received Student's *** instruction in a general education *** class; Student received *** instruction in a ***.

The LRE requirement is one of the central components of an appropriate placement under the IDEA. Compliance is mandatory. The educators who worked with Student on a daily basis were committed to ensuring that Student had the benefit of exposure to grade-level instruction and interaction with nondisabled peers. Student benefited from this participation: Student had access to general education

peers for the development of social skills and access to the general education curriculum provided by qualified educators.

Student is capable of doing grade-level work, and it would be a disservice to place Student in a more restrictive environment where Student would not have access to the full range of the curriculum and instruction from veteran teachers in the subject matter. None of Student's providers claimed that Student was in need of a more restrictive environment, such as placement at a residential facility. To the contrary, the records clearly show that Student not only **will** not benefit from a more restrictive environment, Student would lose many of the skills Student has obtained.

Factor 3: Was the May 2018-19 Program Developed in a Coordinated and Collaborative Manner:

This third factor requires that a student's educational program be developed by the key stakeholders in the student's education. Courts emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances, which is entirely consistent with the third *Michael F.* factor. *Andrew F.* at 994.

For the relevant period in the present case, the record reflects that fourteen (14) individual stakeholders, including the Parent and advocates, met to develop Student's IEP. The May 2018 ARDC resulted in consensus.

As it was implemented in school year 2018-19, the collaboration with the Parent diminished. Notwithstanding the camaraderie in developing Student's 2018-19 program, the Parent distanced herself and made no effort to respond to, or send, messages related to Student's program. The record contains text messages to the Parent from a Behavioral Assistant, emails with teachers, and telephone calls from administrators. The District provided the Parent with IEP progress reports pertaining to Student's progress on Student's goals and objectives in October 2018, December 2018, March 2019, and May 2019. As set forth in more detail in the Findings of Fact, the Parent blocked the District from obtaining any information from outside providers and obstructed the May ^{***}, 2019, ARDC as it tried to develop Student's 2019-20 IEP.

The IDEA does not allow parents to be "rewarded in due process hearings for their failure to access appropriately offered programs and services for their children." *Corpus Christi Indep. Sch. Dist.*, Dkt No. 012-SE-0909 (Mar. 1, 2010)(citing *Loren F. v. Atlanta Indep. Sch. Sys.*, 349 F.3d 1309 (11th Cir. 2003) and *Doe v. Defendant I*, 898 F.2d 1186 (6th Cir. 1990)). The Parent's failure to provide any requested information or to attend the second ARDC meeting on May ^{***}, 2019, manifests complete disregard for this Factor 3.

Factor 4: Did Student Demonstrate Positive Academic and Nonacademic Benefits?

An IEP must aim to enable a student to make progress because the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Andrew F.* at 992. In the present case, Student's IEP was reasonably calculated to provide Student with academic and nonacademic benefits. Student demonstrated Student's achievement of these benefits.

Student made the *** and was awarded a certificate. Student earned the following final grades for the 2018-2019 school year: ***.³

Student was able to do grade-level work. Student's *** teacher recommended that Student be placed in a general education *** class, due to Student's strength in ***. Student's principal testified Student was in the top *** percent of the kids in Student's grade. The educational diagnostician noted that on the state assessments, Student met progress monitoring measures in ***, limited progress in ***, and passed the 2018 *** state assessment.

The Student also demonstrated nonacademic progress during the 2018-2019 school year. Student's Behavioral Assistant noted that Student had improved from ***, testifying that Student was in class more and performed Student's work more. Student was more social with the other students; Student's self-regulation skills had improved.

This case does not present a matter in which a district has failed to provide FAPE to a student by designing an inappropriate IEP and BIP. To the contrary, under the May 2018-19 program, Student made enviable progress. There is absolutely no reason to speculate that Student will not do the same with a similar 2019-20 IEP and BIP.

RESIDENTIAL PLACEMENT:

For a residential placement to be appropriate under the IDEA, the placement must be: (1) essential in order for the student to receive a meaningful educational benefit; and 2) primarily oriented toward enabling the student to obtain an education. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286,299 (5th Cir. 2009). To be "essential," placement must be required in order for the student to receive benefit. If a student is able to receive an educational benefit without residential placement, even if the placement is helpful to a student's education, the school is not required to pay for it under the IDEA. *Id.* at 300.

In the instant case, the overwhelming evidence established that Student has no "essential" need for residential placement. As such, the residential placement would be inappropriate because it would not be primarily oriented to Student's education.

Placement in a residential facility is not necessary to implement Student's IEP; there is no evidence to the contrary. There are no services in Student's IEP that cannot be implemented in the District or that can only be implemented in a residential setting.

None of Student's staff is recommending residential placement. There is no assessment data justifying a residential placement. There is no evaluation report in the record indicating a need for residential placement. The only piece of proffered evidence to support such placement was from Student's doctor, who did not testify at the hearing. This letter was not admitted into evidence to prove the validity of this placement. Likewise, the letter was presented by the Parent at the May ***, 2019, ARDC meeting and

³ Petitioner argued at the hearing and in the Closing Argument that Student's grades in *** and *** were made up because Student was not in a regular or *** program. Respondent explained that Student's participation in other physical activities was the basis for the *** grade and was agreed to by all in 2017. Likewise, Student's *** grade did not comport with the teacher's grade book. Respondent explained that this was a recording error and that Student participated in *** but generally not in the actual room, which was too unstructured. Student's Behavioral Assistant explained how the grades were accumulated.

the Parent denied the school's request for consent to talk to this doctor about this recommendation.

**V.
CONCLUSIONS OF LAW**

1. Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 C.F.R. §300.301 and 19 TEX. ADMIN. CODE §89.1011.
2. **HISD** is responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.
3. HISD did not deny Student a FAPE. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S.Ct. 988, 998 (2017); *Bd. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). Student's 2018-19 BIP and IEP were appropriate. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
4. **Student** failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984).
5. Residential placement is not appropriate for Student at this time. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286,299 (5th Cir. 2009).

**VI.
ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims of Petitioner are DISMISSED WITH PREJUDICE TO REFILEING.

Signed this the 25th day of September 2019.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

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