

decision deadline be extended to October 4, 2017 to allow the submission of post-hearing briefs on September 15, 2017.

B. Legal Representatives

Student has been represented throughout this litigation by Student's legal counsel Idris Motiwala and his co-counsel Elizabeth Angelone, with the Cuddy Law Firm, P.C. The school district has been represented throughout this litigation by its legal counsel Elvin Houston with the law firm of Walsh Gallegos Treviño Russo & Kyle, P.C.

C. Resolution Session and Mediation

The parties agreed to attempt mediation in lieu of a Resolution Session. The parties met in mediation on 0 Tdb[(th)2()-2(on b)- wrRunon bon ofcadld Mew [(T)-3(h)-400464>>BDC /TT1 1 Tf -17.4

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The *** IEP include

of speech/language therapy once a week.³¹ Student also received private OT services in ***.³² The school district's *** day temporary service plan provided Student with the same amount of direct and collaborative related services as stated in the *** IEP.³³

12. Student's mother conferred frequently with the *** *** teacher during the initial 30 day period. Student's mother had questions about how Student was doing, how the teacher was responding to Student's behavior, and what the permanent placement proposal would be. Student's mother stated her preference for a collaborative *** placement.³⁴
13. A Reevaluation Review meeting reconvened on *** ***, 2016. Student's mother attended the meeting along with other members of the multidisciplinary team: a licensed specialist in school psychology (LSSP), a speech/language pathologist intern, the Vice Principal, a general education teacher, the occupational therapist, and the *** special education teacher. The team agreed on the need for an updated evaluation to be completed by *** ***, 2016.³⁵
14. T

16. Attempts at evaluating Student's intellectual and educational performance and need for Assistive Technology (AT) were not successful. Student had difficulty with the testing environment. This was consistent with the *** FIE which included some cognitive and adaptive scores but did not include any functional academic results or a norm referenced intelligence measure.⁴²

17. After the initial 30 day period a permanent placement ARD met on *** ***, 2016. A copy of Procedural Safeguards was provided to Student's mother who attended the ARD. IEP progress reports were explained to Student's mother at the ARD. Others in attendance included the Vice Principal, a general education teacher, the *** special education teacher, the speech/language intern, and the occupational therapist.⁴³ Student was now receiving private behavior therapy services from a BCBA in ***.⁴⁴

needs, improving communication between home and school, and *** behavior. Parental concerns were addressed and information and explanations were provided. The *** teacher added a visual chart to document Student’s behavior. A daily communication log went back and forth between home and school. Student’s attempts to *** were not successful. Student’s mother was reassured school staff supervised Student at all times during the instructional day.⁵²

22. The *** 2016 ARD developed an IEP for Student that covered the period of time from *** ***, 2016 through *** ***, 2017. Specific IEPs were designed for speech/language and behavior that addressed Student’s needs in those areas.⁵³ The IEP included a set of modifications for use in all content areas including ***. *** were included as accommodations for speech therapy⁵⁴

23. The IEP was based on the FIE, Student’s present levels of academic achievement and functional performance (PLAAPFs) and outside reports. The evaluations used as the basis for Student’s IEP included the *** 2016 FIE, data from the Child Observation Record (COR), a developmental profile, behavior data, classroom observations, progress reports, and input from service providers.⁵⁵ COR is used to determine a student’s level of academic skill

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provided.⁶⁹

32. Student made progress in the *** classroom at ***. Student improved Student's response to redirection and demonstrated a diversity of interests in classroom activities. Student's *** behaviors decreased at ***. Student increased Student's use of ***.⁷⁰
33. A meeting with Student's mother, the *** teacher, the Vice Principal, and the counselor convened in *** 2016 to discuss parental concerns. One of the topics discussed was Student's ***. The *** teacher and Vice Principal attempted to address the concerns.⁷¹ During the meeting Student's mother discussed the possibility of Student's private BCBA visiting the classroom at ***.⁷²
34. In early May 2016 the Special Education Area Coordinator (the Coordinator) with supervisory duties over *** conferred with Student's mother to discuss continuing parental concerns. Parental concerns included ***, and, how Student's behaviors were being addressed at school.⁷³ She was also concerned Student was *** at school.⁷⁴ Student's mother felt Student needed a regular ***.⁷⁵ ***. ***.⁷⁶ Student's mother also asked whether the school district had an "autism unit" and was told the school district does have a unit primarily serving students with severe autism.⁷⁷
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36. Student initially received private ABA therapy *** times a week.⁸² The private ABA therapy group also provided Student's parents with parent training.⁸³ Student made progress in Student's private ABA therapy. By January 2017 Student's ABA therapy was reduced to focus on generalization of skills with another BCBA.⁸⁴ Generalization is aimed at maintenance of skills across different settings, different people, and different environments.⁸⁵
37. In the meeting with the Coordinator, Student's mother again discussed the possibility of Student's private BCBA therapist visiting the campus.⁸⁶ In order to visit the campus, the therapist was required to submit a resume and credentials through the school district's website and then submit to a background check. The private therapist then schedules the visit with a school district staff member with similar credentials who accompanies the private therapist during the visit.⁸⁷
38. There were some difficulties getting the private BCBA's background check and credentials properly submitted. The district could not locate the background check information the BCBA said he submitted. The Coordinator notified Student's mother of this issue and had at least one direct email with the private BCBA. The private BCBA never visited the campus.⁸⁸ However, the school district can collaborate with outside therapists through staffings, meetings, and ARD meetings to ensure the school district and outside therapists are "all on the same page."⁸⁹
39. In response to parental concerns over Student's behavior, a school district support specialist conducted an observation and behavioral consult. The support specialist observed Student in the *** classroom at *** from *** through ***, 2016.⁹⁰ A support specialist is assigned to a set of campuses and available to make campus visits to assist with instructional and behavioral strategies, suggestions and classroom management.⁹¹
40. The support specialist observed Student appropriately engaged in the educational activities of the classroom. ***. Student was easily redirected with the use of visual or verbal prompts when needed. When Student became overstimulated in a large group activity Student used appropriate coping strategies. The behavior specialist

⁸² Tr.I:98.

⁸³ Tr.I:99-100., 132.

⁸⁴ Tr.I:100-104; 106, 124; P. 22 - P. 26.

⁸⁵ Tr.I: 105.

⁸⁶ Tr.I: 41, 53-54.

⁸⁷ Tr.I: 54-56.

⁸⁸ Tr.I: 43-44, 45, 56; Tr. II: 459; Tr. III: 710.

⁸⁹ Tr.I: 71-72.

⁹⁰ Tr.I: 43-44, 45, 56; Tr. II: 459; Tr.III:710.

⁹¹ Tr.I: 57; Tr. III: 627.

49. Student's mother then conferred with the school district's *** (the Director).¹²⁰ Student's mother refused to continue to send Student to ***. The Director suggested a transfer to *** to resolve the parental concerns.¹²¹ Student began attending *** in *** 2016.¹²² Student was placed into the *** program at ***.¹²³ Both groups shared a classroom staffed by a special education teacher and *** teacher and two IAs.¹²⁴ The *** students were in school ***. The *** group spent a *** in school – ***. ***.¹²⁵
50. Student's *** 2016 IEP was implemented at ***.¹²⁶ Under the *** 2016 IEP Student received integrative OT services for *** minutes per week for the *** and *** weeks. Additional OT services were provided as needed to support Student's IEP if there was a change in educational staff/program and/or changes in Student's medical or physical status.¹²⁷ The OT worked collaboratively with the *** instructional staff by providing suggestions and recommendations for meeting Student's physical and sensory needs.¹²⁸
51. Under the *** 2016 IEP speech therapy services Student received *** minute direct speech therapy sessions for weeks ***, and *** during the *** week grading period, *** minute integrated therapy session during weeks *** and *** of the *** weeks and no speech therapy during weeks ***. For the *** week grading period the IEP contemplated *** minute direct speech therapy services for *** of the *** weeks, *** minute *** therapy session for *** and no speech services for ***. For the *** week grading period the IEP contemplated *** minute direct speech therapy services per week for weeks *** and *** minute *** therapy session in the *** week.¹²⁹
52. The *** teacher at *** collaborated with the *** teacher. The teachers teach lessons together ***.¹³⁰ There were *** students in the *** group. The total number of *** students in *** ranged from *** over the school year as some students ***.¹³¹ The ***/*** teachers also selected instructional activities from *** curriculums. The *** and *** teachers worked together in selecting lessons and activities for the students. The

¹²⁰ Tr.I:26, 32; Tr. II: 516.

¹²¹ Tr.I:27, 67-68; J.6.

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classroom includes ***. ***.¹³²

53. The *** classes at *** followed a similar structured daily routine to the *** daily schedule with a combination of individual, small and large group activities in different classroom areas.¹³³ The classroom is very safe -- ***.¹³⁴ The *** *** teacher used visual schedules in the classroom and the schedule was very consistent. Students knew what to expect throughout the day.
54. As at ***, ***. For example, ***.¹³⁵ The *** classroom also included ***. ***. ***. Each student also engages in ***. Student learned over the course of the 2016-2017 school year to plan Student's worktime without much prompting. By December Student was ***.¹³⁶
55. For the first few weeks the *** *** teacher *** with Student at parental suggestion. As the staff became more familiar with Student they no longer needed ***. At the beginning of the year Student's mother shared concerns about Student's ***. Student made progress ***. Student did not *** during the 2016-2017 school year.¹³⁷
56. Student's mother and the *** teacher discussed ways to communicate with one another. The *** teacher at *** used a smart phone application to communicate with Student's parents. Parents can add the application to their phone. The application facilitates messages between the teacher and the parent, either as a group or one on one Student's mother responded positively to the phone application.¹³⁸
57. Student enjoyed participating in *** at ***.¹³⁹ Different campuses have different extracurricular activities. At *** Student was not eligible for *** because it was only available for students in *** that campus.¹⁴⁰
58. Student's mother also requested use of ***.¹⁴¹ The school district did not have ***. When Student returned to school in the fall of 2016 Student was staying seated, responding to verbal cues, so there was not much of a need for ***.¹⁴² Student's mother

¹³² Tr.I:242-243, 246-247.

¹³³ Tr.I:244-245; Tr. III: 661-664.

¹³⁴ Tr. II: 519.

¹³⁵ Tr. II: 520.

¹³⁶ Tr. II: 521-524, 560.

¹³⁷ Tr. II: 527-529, 534-535.

¹³⁸ Tr.II: 516-517.

¹³⁹ Tr. II: 392.

¹⁴⁰ Tr. II: 452, 460-461; Tr. III: 706,708-709.

¹⁴¹ Tr. II: 478-480.

¹⁴² Tr. II: 497.

provided the staff at *** with *** at the beginning of the 2016-2017 school year. The instructional staff used *** at times to redirect Student when Student engaged in disruptive *** behavior – ***. The *** was not always effective. However, Student was successfully redirected – sometimes it took fivt82t to

Student received assistance in the classroom working on a variety of fine motor tasks, including ***. These activities, built into the classroom curriculum, supported Student's development of ***. Student was practicing Student's *** every day. Student did not require direct OT services for that purpose.¹⁵⁸ The ARD discussed Student's functional needs for ***. The October ARD also discussed Student's *** – in particular the use of ***. ***.¹⁵⁹ The OT goals in Student's October 2016 49E

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).

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 a meaningful 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) *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist.*, 137 S.Ct. 988, 100 (2017); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188, 200201, 203204 (1982).

The basic inquiry is whether IEP implemented was reasonably calculated to enable the student to make progress in light of the student's unique circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. at 999. FAPE is determined on the basis of the overall educational benefit provided to Student through implementation of the IEP. See, *Klein Ind. Sch. Dist. v. Per Hovem*, 690 F. 3d 390, 398 (5th Cir. 2012)

B. IEP

In meeting the obligation to provide FAPE the school district

C. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.¹⁸⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999F.2d 127, 131 (5th Cir. 1993). The presumption is in favor of the school district's educational plan. *R.H. v. Plano Ind. Sch. Dist.*, 607 F. 3d 1003, 10004 (5th Cir. 2011).

D. IEP Goals and Objectives

district until the new school district conducts an evaluation and creates a new IEP. Dallas Ind. Sch. Dist.

the previous IEP.

evidence showed the school district does not ***. However, school district staff admitted a *** special education placement can be provided for students when needed to make progress on IEP goals. Once the school district learned from parental report that Student ***, the school district should have followed up with the *** school district to confirm the report and consider whether Student needed *** to make progress on Student's IEP goals. If verified by the *** district, the school district should have placed Student in *** programs during the temporary services period to determine whether Student's ***.

The school district may nevertheless have concluded Student could make progress on Student's IEP with the *** program following the temporary services period. However, it came to that conclusion without first giving the ***

burden of proof is not on the school district to prove that they were. See, *Schaffer v. Weast*, supra. Indeed, the evidence showed the temporary services plan did include OT and speech/language services in the same amount and frequency as those stated in Student's IEP during the temporary services period.

G. FAPE

1. The Four Factors Test

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

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

The program is administered in the least restrictive environment;

The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and,

Positive academic and non-academic benefits are demonstrated. *Cypress Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program for reimbursement purposes. *Richardson Ind. Sch. Dist. v. Leah Z.*, 583 F.2d 286, 294 (5th Cir. 2009). The Fifth Circuit recently confirmed the Supreme Court's standard for evaluating the sufficiency of a student's IEP stated in *Endrew F.* is fully consistent with the four factor test. *Keith & Linda G. v. Waller Ind. Sch. Dist.* 2017 WL 271341 (5th Cir 2017).

2. Individualized on the Basis of Assessment and Performance

First, the evidence showed the IEP implemented during the relevant time period was individualized on the basis of assessment and performance. The IEPs implemented during the relevant time period were based, in part, on the school district's FIE which included a FBA. The FIE included a wide range of assessment, information from a variety of sources (including updated parent information), a review of prior assessment data from the *** public schools, and observations and evaluations by teachers and related service personnel.

Petitioner complains about the reduction in direct OT and speech/language services and contends the reduction in direct services was based on insufficient evaluations.ivaâLA"4Ä2 ã*ΓS!3í!÷62

district to employ a specific methodology. See, *Lachman v. Illinois State Bd. of Educ.*, 852 F. 2d 290, 297 (7th Cir. 1988). The issue with regard to related services is not which program offers superior services but instead whether the services provide a meaningful, not maximum, educational benefit. Stanley6(i)-6(o)-4(n)-(a)4(ni)-2(-d(n)-(a)4(ni)-2(-N)-S.D-2(1(. 2d)-1Soa)4(d hw-4(e

Cnty. Sch. Dist., 137 S.Ct. 982 (2017). Furthermore, the school district is not required to provide Student with the best possible education. Student does not need to improve in every academic and non-academic area to receive an educational benefit. The issue is not whether the school district could have done more. Instead, the inquiry is whether Student received an educational benefit. *Houston Ind. Sch. Dist. v. V.P.*, 582 F. 2d 576, 590 (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.

H. Availability of Individuals Trained in ABA

Petitioner complains the school district failed to have available, either through contract or on staff, individuals trained in ABA. Petitioner contends this alleged failure resulted in the failure of the ARD meetings to "appreciate the necessity and importance of these critical services for the student." Petitioner failed to meet the burden of proof on this issue. *Schaffer v. Weast*, supra. First, Student's private ABA therapists did participate in relevant ARD meetings. Second, the evidence showed the ARD did consider the strategies stated in the Autism Supplement, including ABA based, peer-reviewed, research-based programming. Some of those strategies were incorporated into Student's educational program. Third, the evidence showed the school district does in fact have BCBA's on staff. Finally, the district's behavioral specialists are trained in the use of effective behavioral strategies and interventions. Student's behavior

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1. Respondent provided Petitioner with the requisite comparable services upon transfer from a public school district in another state. 34 C.F.R. § 300.324 (f).
2. Respondent provide Petitioner with a free, appropriate public education through an Individualized Education Plan reasonably calculated to enable Petitioner to make progress in light of Petitioner's unique circumstances and derive a meaningful educational benefit from the educational program. Endrew F. ex rel. 0047ps exTa007 Tw 6.95sT3 1

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