

DOCKET NO. 117-SE-0217

STUDENT, B/N/F PARENT,
Petitioner

v.

PEARLAND INDEPENDENT SCHOOL
DISTRICT,
Respondent

§
§
§
§
§
§
§
§

BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Petitioner, *** (Student) b/n/f*** (Father) (collectively, Petitioner), filed a request for an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA) on February 2, 2017, with notice of the complaint being served by the Texas Education Agency (Agency) on February 2, 2017. The Respondent to the complaint is Pearland Independent School District (District).

After review of the evidence and the closing arguments of the Parties, the Hearing

After reviewing the complaint that was initially filed by Father as a self-represented party on February 3, 2017 the Hearing Officer issued Order No. 2 seeking clarification of some alleged issues and requested remedial action. Petitioner sought additional time to respond to the Hearing Officer for clarification and that request was granted in Order No. 3 issued on February 7, 2017.

On February 10, 2017, Attorney Elizabeth Angelone entered an appearance on behalf of Petitioner and filed a request to amend the complaint. Order No. 4 issued on February 14, 2017, granting Petitioner's request to amend the complaint and the amended complaint was filed on February 14, 2017.

February 20, 2017. 34 C.F.R. § 300.508(c)(3)(ii) The District filed its response to the amended complaint on March 2, 2017 and did not file a challenge to the sufficiency of the complaint or a plea to the jurisdiction.

Order No. 5, the First Amended Scheduling Order, was issued on February 21, 2017.

Order No. 6 of March 8, 2017, granted the District's request to delay the prehearing conference by one week due to the District being on Spring Break. After finding good cause, the request was granted and the prehearing conference was reset to March 20, 2017. 19 Tex. Admin. Code § 89.1186(b)(4).

Pursuant to 19 Texas Administrative Code § 89.1180, the telephonic prehearing conference convened on March 21, 2016. Attorney Elizabeth Angelo of the Cuddy Law Firm appeared on behalf of Petitioner. Attorney Marri Schneider of Thomas & Horton, LLP appeared for the District and was assisted by ***, District Director of Special Services, ***, District General Counsel, and ***, District Special Programs. During the prehearing conference the Parties informed the Hearing Officer that they had agreed in writing to forgo the resolution and proceed straight to mediation.

On March 21, 2017, Petitioner filed an unopposed request for a continuance based on the same IEE that was still not complete and the report being unavailable to the Parties prior to the existing

The hearing convened on May 23, 2017, at the District's Education Support Center at 1928 North Main, Pearland, Texas. Attorney Elizabeth Angelone appeared on behalf of Petitioner. Attorney Marri Schneider Vogel of Thomas & Horton, LLP appeared for the District and was assisted by ***, District Director of Special Services, and ***, District General Counsel. Vickie D. McConnell provided the court reporting services.

At the conclusion of the hearing, the District moved for an extension of the closing briefing deadline and the decision due date to afford the Parties time to write their closing briefs with the benefit of having the completed transcript and to afford the Hearing Officer time to write the final decision while considering the Parties' briefs. Petitioner concurred and did not oppose the motion. After considering the factors set out in 19 Tex. Admin. Code § 186(b)(1)(4), the Hearing Officer found that the District stated good cause and the motion was granted. The record during the hearing. Specifically, the District requested to extend the due date from July 31, 2017, until August 4, 2017—a period of 4 days. The Hearing Officer found in Order No. 14, issued on June 8, 2017: (1) the extension of time will not adversely affect Student's educational interests because Student will be in summer recess even if the extension of time were denied; (2) the Parties need the additional time due to the time necessary to transcribe the proceeding and make the transcript available to the Parties for briefing; (3) the delay will not cause a financial burden or cause some other detrimental consequence on either Party; (4) the prior continuances were for good cause and were not excessive.

II. ISSUES, PROPOSED RELIEF, AND BURDEN OF PROOF

A. Issues

In the complaint, Petitioner alleges that the District denied Student a FAPE and raised the issues below, which were noted in Order No. 7:

DOCKET NO. 117-SE-0217

times.¹ Petitioner must, therefore, establish that the alleged violations resulted in a denial of FAPE or other substantive violation of the IDEA.

III. FINDINGS OF FACT

1. Student is a ***year-old *** student who resides with Student's parents within the geographical and jurisdictional boundaries of Pearland Independent School District.²²

6. On ***, 2013, a District LSSP conducted an FIE for Student recommending that Student should be considered for special education services as a student

removed to the ***classroom until Student regained control of Student's behavior. This quasi "dual placement" was deemed to be the least restrictive environment (LRE).¹⁷

18. On ***, 2016, Parent requested an ARDC meeting.¹⁸
19. The ***, 2017 ARDC report left the PLAAFPs as they were previously. This report did not include goals.¹⁹
20. The ARDC met on ***, 2017 and left the PLAAFPs, including behavior, exactly as they were previously.²⁰
21. During the relevant time period during the 2016-17 school year, Student was restrained approximately *** times²¹ and had approximately *** disciplinary referrals.²²
22. During the relevant time period during the 2016-17 school year, Student was placed into out of school suspension *** times for a total of *** school days.²³
23. Student received ***disciplinary referrals between***, 2016 and ***, 2017. Throughout this time, Student's IEP indicated that office referrals do not work well for Student.²⁴
24. On ***, 2016, Student was sent to the office.***. ***. Student's *** teacher, emailed Parent indicating she had sent Student to the office for disruptive behavior.²⁵ Student received a *** out of school suspension resulting from this incident.²⁶
25. Parent sent an email to Student's Principal on *, 2016, about Student taking some time off from school on doctor's recommendation so Student could ***. The Principal asked Parent to let her know if Student would be missing more days than required by the school related to that incident.²⁷

¹⁷ JE-18 at 21.

¹⁸ PE-49.

¹⁹ JE-22.

²⁰ JE-26.

²¹ PE-13 at 1929.

²² PE-14.

²³ PE-15 at 23.

²⁴ PE-14, 15; RE-3.

²⁵ PE-23; JE-46a.

²⁶ PE-16.

²⁷ PE-35; RE-21.

26. Based on the information forwarded by Student's psychiatrist about the need to *** and the fact that he described Student's ability to cope with the rigors of the school day, the ARDC decided that *** per week of homebound instruction was appropriate.²⁸
27. Homebound services are for general or special education students who cannot tolerate a regular or even a shortened school day.²⁹ The ARDC can determine if a special education student needs home bound services.³⁰ The ARDC has the authority to determine any appropriate placement for a student.³¹ The District believes that for most cases a doctor's note is required in order for a student to receive services at home.³² Father requested the ARDC approve *** hours of at home services per week.³³ Father sent an email accepting the *** hours of homebound services per week "because it was better than nothing."³⁴ -7w-6(t)-6(o)

31. On ***, 2017, Student's psychiatrist completed the homebound recommendation paperwork. It stated that Student was unable then to function in a school setting even for a shortened day, that homebound was the most restrictive environment, and that this recommendation was based on his professional assessment of Student's condition. Student would be able to complete **four sessions per week which is the length of time indicated on the printed form.⁴⁰

32. Parent requested *** and the District denied that request; Parent then requested temporary services at home.⁴¹

33. The District explained the process to Parent for a ***, general education, homebound placement (a) (a) (4) (i) (2) (4) (m) (1) (3) (d) (3) (s) (3) (2) (6) (1) (4) (3) (d) (6) (1) (b) (4) (2) (1) (5) (9)

36. On ***, 2017, a brief ARDC meeting was held to discuss Student receiving homebound services. The report did not list PLAAFPs or goals, but approved Student for homebound services.⁵⁰
37. Beginning***, 2017, Student's homebound teacher began visiting Student for homebound instruction. The homebound teacher kept a log indicating her time and a summary of instruction provided.

41. During the current 2016-2017 school year Student ***.⁵⁶
42. ***.⁵⁷ The District convened a Manifestation Determination Review (MDR) on ***, 2017 to determine whether Student's misconduct was a manifestation of Student's disability. The review determined Student's misconduct was a manifestation of Student's disability. District did not order an interim change of placement to Disciplinary Alternative Educational Placement (DAEP) as normally required by the Student Code of Conduct.⁵⁸ Student remained at Student's home campus.
43. On ***, 2017, an incident occurred in the ***.⁵⁹
44. ***.⁶⁰
45. On ***, 2017, Parent emailed staff requesting the following ahead of an ARDC meeting: written summary of all physical restraints of Student; copies of the psychological report, FBA dated *** ***, 2016; documentation of all counseling supports, including meetings with teachers, as noted in the IEP. Additionally, Parent stated his expectation that the meeting would have documentation of how Student's behavior plan was utilized prior to Student's suspension (specifically whether Student

48. *** and provided notice to Parents.⁶⁴

49. On ***, 2017, Parent sent an email to three District representatives expressing concern for Student's safety at school. Parent brought up that ** were being used as a substitute for implementing an effective behavioral plan for Student. Parent requested the District present him with a plan for keeping Student safe.⁶⁵

50. On ***, 2017, the Principal mailed Parent regarding 1 -1.15 44(e f)-1(1o)-4(r)- [(s)-5(aff)-1(e)-20

eqa5(intle b0)y

56. Student's ARDC convened on ***

63. Student's special education class supports were removed when Student was placed into *** because Student was performing at grade level.⁷⁷
64. Student remained in the *** program after being placed into ***.⁷⁸
65. After being placed into *** Student was restrained *** times from *** 2016 through *** 2017 (a period of four months)⁷⁹ received *** disciplinary referrals,⁸⁰ *** out of school suspensions⁸¹ and *** incidents *** at school.⁸²
66. Prior to the change of placement to *** during the 2016-2017 school year Student was restrained *** times,⁸³ received *** disciplinary referrals,⁸⁴ no out of school suspensions and no ***.
67. The change of placement to *** and the removal of special education supports was a stressor that contributed to Student's behavior declining during the 2016-2017 school year.
68. On ***, 2016, Parent requested an ARDC meeting.⁸⁵
69. The ***, 2017 ARDC meeting left the PLAAFPs as they were previously. This report did not include goals.⁸⁶
70. On ***, 2017, Student wrote in Student's *** assignment, ***." ⁸⁷
71. Student was issued Student's final report card from the District on ***, 2017, and passed all of Student's classes with the exception of *** and ***: *** (with accommodations), ***, ***, ***, ***, *** (with accommodations) ***, and *** . ⁸⁸ 82(di)-2(0 Tr. *** pan2.15 T4.8(7d

Issue 2: Did the District fail to timely and comprehensively evaluate Student in all areas of suspected disability and need?

72. Student's initial Full Individual Evaluation (FIE) was performed on ***, 2013. The evaluation process was begun because of concerns with Student's school behavior.⁸⁹
73. The *** 2013 FIE determined that Student qualified for special education as a student with an Emotional Disorder (ED) for significant ***.⁹⁰
74. On ***, 2015, the ARDC referred Student for an Occupational Therapy (OT) consult, and if deemed necessary, an evaluation due to concerns that Student's ***. The ARDC sought to rule out whether Student's *** difficulties were caused by physical problems or motor skills problem.⁹¹
75. Student's three year reevaluation was due in ***2016. The District obtained written parental consent to reevaluate on ***, 2015.⁹²
76. Student's three year reevaluation was timely completed on ***, 2016. The reevaluation determined that Student continued to qualify for special education for ED, and assessed Student's cognitive/intellectual abilities to be average, Student's educational and developmental performance to be average, determined that assistive technology was not needed after using informal measures to assess, and according to the psychological evaluation Student suffers from ***. Based on information provided by teachers, staff, Parents and a ***

report is dated ***, 2016.⁸⁶ Several tests were administered as part of the psychological reevaluation including the Behavior Assessment for Children (BASC 3), the ***, and the ***.⁹⁷ The LSSP determined that Student continued to meet the special education eligibility criteria for a student with an emotional disturbance

79. Based upon the results of the reeva

concerns with Student***; the ATL concluded it was a task completion issue and that providing Student*** would relieve Student's frustration *** and increase***. ¹⁰⁶

82. The District agreed to conduct a assistive technology evaluation after the due process hearing was filed. The ATL completed the AT evaluation and report on 11/15/2017. The ATL testified that Student was receiving homebound instruction at the time that she conducted the evaluation so she contacted Mother to come to the house to observe Student's instruction. The ATL also wanted to obtain information from Student's mother about her concerns so she could assess them. She wanted to look at what tasks were difficult so she could assess what technologies would be helpful. The ATL testified that Mother indicated that she *** , but she was concerned that Student could *** so the ATL informed Mother that she would bring her a *** to the home and make sure everyone knew how to use it.¹⁰⁷ The homebound teacher already knew how to use the device as did Student, so the ATL only had to train the parent.¹⁰⁸

Issue 3: Did the District fail to provide Student's educational program in an appropriate educational environment ~~(e)~~ both the least restrictive

DOCKET NO. 117-SE-0217

DECISION OF HEARING OFFICER

and***

112. Every family at *** is assigned a **. The ** consist of two licensed ** and ** and family therapist who is certified in **. Parents of ** students are required to meet ** with the ** staff (**) to discuss what is being observed in school versus what the parents are observing at home in an effort to devise appropriate interventions to assist students. If parents do not attend the sessions the student is disenrolled.
113. Student receive ** administered by the licensed **.
114. All of ** academics are aligned with the TEKS.
115. All ** teachers are certified and there is a master level special education teacher. student/teacher ratio is **.
116. The ** has spoken with Student's ** and has reviewed what the school has done for the student.

is an important crucial aspect.¹⁵⁸ *** does*** with a signed consent from the parents.¹⁵⁹ They have private speech therapists and occupational therapists that come and use their facility.¹⁶⁰ Student would be an appropriate student for *** does not have a BCBA on staff.¹⁶² They do have a social skills curriculum.¹⁶³ The *** believes Student is "reactive" - it is not likely Student purposely sets out to ~~164~~.

119. *** rarely rereel 77148Span <</udoesia hs (s)-uuse0(S(e0(S. t)-2(f)-7(or)3())T3 0 Td (***)Tj)]24)
119. ***.164

The primary purpose of the IDEA is to ensure that children with disabilities receive a FAPE.¹⁷² The Fifth Circuit has explained that a FAPE “need not be the best possible one, nor one that will maximize the child’s educational potential.”¹⁷³ Instead, the IDEA only guarantees a child with a disability an education reasonably calculated to enable a child to make progress appropriate in light of the child’s unique circumstances. The District is not required to implement the “best” program designed by an expert to maximize a child’s educational potential.¹⁷⁴ Restated, the IDEA guarantees only a “basic floor of opportunity.” for every disabled child, consisting of “specialized instruction and related services which are individually designed to provide educational benefit...”¹⁷⁵ Still, “the educational benefit to which the IDEA refers cannot be a mere modicum or de minimis; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement.”¹⁷⁶ “The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.”¹⁷⁷ In short, the educational benefit that an IEP is designed to achieve must be “meaningful” and “appropriate” in light of the child’s individual conditions.^{3(E)1(P).9(p)-}

recycled from one IEP to another. Student was identified as qualifying for special education for an ED Student has emotional problems. An effective BIP that is implemented with fidelity is essential for Student to make academic and non

recitation of Student's behavior.¹⁸⁷ The IEPs generated while Student was at *** contain separate BIPs with clear goals and objectives. The IEPs from reference Student's BIP but the actual contents of the BIP are not found until after the ARDC meeting on ***, 2017.¹⁸⁸

Student's *** BIP contained two goals: (1) **, and (2) **. Each goal covered an instructional period of thirty six instructional weeks and each goal had two objectives divided over two seventeen week instructional periods. The goals were **. The first objectives measured progress by having no more than ** and the second objectives **. Behavioral progress reports were not introduced into evidence from the time Student attended ** based upon Student's well documented behavior incidents and the Hearing Officer finds that Student was not progressing in Student's behavior goals, in fact Student regressed.¹⁸⁹ The District's failure to revisit the BIP and its approach to Student's behavior leads to the conclusion that the IEP was not sufficiently individualized to meet Student's unique behavior needs and denied Student a FAPE.

2. Homebound Instruction

Based on the recommendation of Student's psychiatrist, the District authorized ** hours per week of homebound instruction on ***, 2017 and Student started receiving homebound instruction on ***, 2017.¹⁹² The stated ** need for homebound instruction was [Student] has continued to experience a severe deterioration of [Student's] symptoms, **. It also appears that [Student] is not able to tolerate the school environment at this time as [Student] has frequently become ** due to [Student's] disorders. It is our recommendation that [Student] be homebound until [Student's] disorders are better controlled and [Student] no longer poses a danger to ** self or others.¹⁹³ (emphasis added).

¹⁸⁷ JE-16-22.

¹⁸⁸ JE-26, 30.

¹⁸⁹ JE-26 at 3; JE-30 at 4.

¹⁹⁰ See e.g., PE-7 at 35 (**).

¹⁹¹ JE-31.

¹⁹² RE-18.

¹⁹³ JE-35 at 2.

Pursuant to 19 Tex. Admin. Code § 89.63(b), the ARDC defines the regular school day for homebound students. Instructional settings must be based on the individual needs and individualized education programs (IEPs) of eligible students receiving special education services and shall include the following (emphasis added):

Students served on a homebound or hospital bedside basis are expected to be confined for a minimum of four consecutive weeks as documented by a physician licensed to practice in the United States. Homebound or hospital bedside instruction may, as provided by local district policy, also be provided to chronically ill students who are expected to be confined for any period of time totaling at least four weeks throughout the school year as documented by a physician licensed to practice in the United States. The student's ARD committee shall determine the amount of services to be provided to the student in this instructional arrangement/setting in accordance with federal and state laws, rules, and regulations, including the provisions specified in subsection (b) of this section.¹⁹⁴

While the ARDC has the authority to determine the regular school day and the amount of instruction offered while homebound, the instruction must still be linked to the IEP and designed to allow a student to make educational progress.

It is reasonable to infer from the evidence the District's decision to offer only hours of homebound instruction was versus a decision based upon the educational needs of Student. The evidence showed the. There is no evidence that the delivery of homebound instruction was tied to Student's educational needs or that Student's IEP was even considered when limiting homebound instruction to hours per week.

While the Agency has adopted a rule that permits the ARDC to define what a regular school day is and the amount of services to be provided, the rule clearly states it must be implemented in accordance with federal and state laws, rules, and regulations.¹⁹⁵ Furthermore, instructional arrangements/settings must be based on the individual needs and individualized education

¹⁹⁴ 19 Tex. Admin. Code § 89.63(c)(2)(A).

¹⁹⁵ Tr. at 52425.

¹⁹⁶ 19 Tex. Admin. Code § 89.63(c).

programs (IEPs) of eligible students¹⁹⁷. There is no evidence in the record that the four hours of homebound instruction were based on Student's needs or IEP. The District Dejected Father's request for *** hours per week of homebound instruction and arbitrarily approved *** (hours). Although the ARDC may determine the amount of homebound services, that determination must be based on the unique and individualized needs of the student. The ARDC summarily rejected the father's request for more than four hours of homebound instruction per week without considering whether Student could have tolerated more."

The applicable federal rule, 34 C.F.R. § 300.39, "(a)(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including --(i) Instruction conducted in the classroom, in the home, hospitals, and institutions, and in other settings ... (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction -- (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children" (emphasis added).

Student's psychiatrist recommended homebound to remove Student from the school environment until Student was no longer a threat of harm to *** self or others, he did not make a recommendation concerning the amount of homebound instruction Student should receive. After receiving the psychiatrist's recommendation, the District sent a preprinted form that simply asked whether Student could tolerate *** hours of homebound instruction per week "yes" or "no." The decision to limit Student's homebound instruction to *** hours per week was not based on a medical recommendation.

Student was authorized homebound instruction on ***, 2017 and remained homebound until the end of the 2016-2017 school year. The failure to follow and implement the Student's IEP

¹⁹⁷ Id.

during the approximate ***days from ***, 2017 until ***, 2017, and the failure to offer homebound instruction based upon Student's educational needs was denial of FAPE during that *** month period.

C. Issue 2: Did the District fail to timely and comprehensively evaluate Student in all areas of suspected disability and need

Student's three-year reevaluation was completed on ***, 2016. The LSSP who performed the psychological reevaluation concluded, "[Student] currently demonstrates many of the behaviors commonly associated with ADHD. It should be noted that [Student's] difficulties with attention and focus may also be interfering with [Student's] academic learning and behavior (emphasis added). ... Further follow up in this area may be warranted."¹⁹⁸

Districts have an ongoing obligation to identify, locate, and evaluate all children with disabilities residing in the State to ensure that they receive needed special education services.¹⁹⁹ "The IDEA's Child Find obligation imposes on each District an affirmative duty to have policies and procedures in place to locate and timely evaluate children with suspected disabilities in its jurisdiction, including "[c]hildren who are suspected of being a child with a disability ... and in need of special education, even though they are advancing from grade grade[.]"²⁰⁰ "The Child Find duty is triggered when the District has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability."²⁰¹ A District "must evaluate the student within a reasonable time after school officials have notice of behavior likely to indicate a disability."²⁰²

¹⁹⁸ JE-8 at 78.

¹⁹⁹ 20 U.S.C. §§ 1412(a)(3)(A), 1412(a)(10)(ii).

²⁰⁰ El Paso Indep. Sch. Dist. v. Richard, 567 F. Supp. 2d 918, 949 (W.D. Tex. 2008) (quoting 34 C.F.R. §§ 300.111(a), (c)(1)).

²⁰¹ Id. at 950

²⁰² Id.

A Hearing Officer must undertake a two-part inquiry to determine whether a local educational agency has complied with its Child Find responsibilities. First, the Hearing Officer “must examine whether the local educational agency had reason to suspect that a student had a disability, and whether that agency had reason to suspect that special education services might be needed to address that disability.” Next, the Hearing Officer must determine if the local educational agency evaluated the student within a reasonable time after having notice of the behavior likely to indicate disability.”²⁰³

The*** 2016 psychological reevaluation identified ADHD as a suspected area of disability and specified Student behaviors that were consistent with ADHD. The reevaluation coupled with Student’s escalating behavior issues triggered the District’s duty to evaluate for ADHD. A failure to evaluate in all areas of suspected disability is a Child Find violation.

D.

evaluation, or educational placement of Student or the provision of FAPE. The issue of retaliation is more appropriately resolved through claims brought under Section 504 of the Rehabilitation Act of 1973 or Section 1983 of the Civil Rights Act which are outside of the scope of this due process hearing. Petitioner's retaliation claim is DISMISSED for lack of jurisdiction.

H. Summary

Student's educational program during the relevant time period was not individualized on the basis of the 8/2016 reevaluation and designed to address Student's unique circumstances. The BIP and other behavioral interventions proved to be ineffective and resulted in Student regressing behaviorally which significantly impeded Student's academic progress and was a denial of FAPE. The decision to offer only 1 hour of homebound instruction per week was not based upon Student's educational needs and therefore resulted in a denial of FAPE. The 2016 reevaluation revealed Student had another suspected qualifying disability of ADHD but the District failed to evaluate and thus violated the District's Child Find obligation. Based upon the existing circumstances of Student's IEP, Student's dual IEP/general education and homebound placements were the LR. Parent's received Notice of Procedural Safeguards and Prior Written Notices. Even if the District failed to provide the requisite Notices in a timely manner that failure did not impede Parent's participation in the ARD or IEP development process. Student was not socially promoted to the 4th grade because Student did not meet all academic requirements for grade promotion.

V. RELIEF

Besides the request for attorney's fees that was previously dismissed, Petitioner seeks three items of relief for the violations identified above: (1) that Student be placed in a public or

²⁰⁴ 34 C.F.R. § 300.507(a) 19 Tex. Admin. Code § 89.1151(a)

private therapeutic day school;²⁰⁵ (2) an IEE for assistive technology and/or any other area not provided; and (3) compensatory relief that is equal to the amount of deprivation.

A. Private Therapeutic Day School Placement

Parent requested a private therapeutic placement at school district expense. Student must meet a two part test in order to secure private placement at school district expense. First, Student must prove that the school district's program was not appropriate. Second, Student must prove that the proposed private placement is appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school.²⁰⁶

The District argues that a private therapeutic day placement is unnecessary because the *** program does not offer anything that the District cannot or will not provide such as counseling AT support, and the behavioral support provided through the *** program.²⁰⁷ Furthermore, the District contends that *** does not provide free related services to students and does not offer counseling.²⁰⁸ The District conceded, however, that the District could pay for counseling and other necessary related services.²⁰⁹

1. Was the District's IEP and Placement Decisions a Denial of a FAPE

The District's inability to devise and implement effective behavioral supports for Student and the limitation of homebound instruction to *** hours per week denied Student a FAPE. The District's behavioral program resulted in Student's behavioral regression. Over the course of two full school years the District has demonstrated they are unable to meet Student's current emotional

²⁰⁵ The Parties presented evidence and closing arguments on *** reimbursement from *** but *** reimbursement was not an identified request for relief prior to hearing and is beyond the scope of this final decision. See Tr. at 8 at 4.

²⁰⁶ Burlington Sch. Committee v. Dept. of Educ.; 471 U.S. 359 (1985); Florence Cnty. v. Cartersville Sch. Dist. Bd.; 510 U.S. 7 (1993).

²⁰⁷ Tr. at 891.

²⁰⁸ Tr. at 18283.

²⁰⁹ District's Closing Brief at 62.

their nondisabled peers, including students placed in private settings, to the “maximum degree appropriate.”²¹⁵ When considering Student’s unique emotional problems, placement at a school that specializes in educating students with emotional problems, with a lower student/teacher ratio, and weekly parental involvement is Student’s LRE at this time. The benefits of placement at *** outweigh any benefit derived from education with nondisabled peers.

*** is a fully accredited school specializing in educating students with emotional problems. Counseling services are provided by *** in the form of weekly group therapy for Student and *** meetings with Parents by the ***. Other necessary support services can be offered by the District or at *** with private providers. Petitioners met their burden of showing a private *** placement at *** is appropriate.²¹⁶

B. Assistive Technology (AT) IEE and/or any other area not provided.

C. Compensatory Relief that is Equal to the Amount of Deprivation

Petitioner requests unspecified compensatory relief equal to the amount of deprivation. Based on the finding that Student was denied a FAPE the Hearing Officer has ordered specified relief in Section VII of this Final Decision. There was no other evidence to support compensatory relief beyond that which is already granted in this Decision.

VI. CONCLUSIONS OF LAW

1. The District is an LEA responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding, and the District is required to provide each disabled child with a FAPE pursuant to the IDEA, 20 U.S.C. § 1400 et seq.
2. Student, by next friends, Parent, (collectively, Petitioner) bears the burden of proof on all issues raised in Petitioner's complaint. *Schafer ex rel. v. West*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The Texas one-year statute of limitation (SOL) began running one year before the date the Complaint was originally filed February 2, 2016. The accrual date of Petitioner's amended complaint for purposes of the Statute of Limitations (SOL) was February 19, 2016. 19 Texas Administrative Code § 89.1151(c).
4. During the relevant time period the District failed to draft and implement an appropriate Individualized Educational Program (IEP) for Student that was effective in meeting Student's behavioral needs. Student's Behavior Intervention Plan (BIP) was ineffective, led to behavioral regression and was not adequately individualized to meet Student's unique behavioral needs and resulted in a denial of FAPE. 34 C.F.R. § 300.324(a).
5. During the April 2016 reevaluation, the District failed to assess Student in all area of suspected need and disability. The failure to evaluate Student for ADHD was a Child Find violation. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. 300.111.
6. During all relevant time periods Student was placed in the least restrictive environment. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114.
7. During the relevant time periods the District failed to provide appropriate accommodations to Student. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114.

("Harmlessproceduralerrorsdo not constitute a denial of FAPE.") quoting J.W. ex rel. J.E.W. v. Fresno Unified School District, 626 F.3d 431, 432 (9th Cir.2010)

8. Student was not improperly socially promoted from ~~to~~*** grade. Student met or exceeded all grade requirements for advancement. Tex. Ed. Code § 28.021.

8. The District shall provide any necessary support services (AT, OT, counseling, etc.) at public expense during the 2017-18 school year. The District may provide necessary support services via contract or by directly providing the services at a designated District facility. If the District contracts for services, any mileage Parent incurs to access those services shall be reimbursed by the District at the applicable State rate if the District directly o