

The case was reassigned to the undersigned hearing officer on January 23, 2017. A second prehearing conference convened by telephone on January 31, 2017 after Petitioner failed to timely file disclosure documents. At Petitioner's request the due process hearing was continued to February 23-24, 2017, and the decision due date extended to April 21, 2017 in Order No. 4 issued on February 1, 2017.

B. Legal Representatives

Student has been represented throughout this litigation by Student's mother, *** (Ms. ***) who is not an attorney. The charter school has been represented throughout this litigation by its legal counsel Jan Watson with the law firm of Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

C. Resolution Session and Mediation

The parties attempted mediation in lieu of the Resolution Session on January 11, 2017, but it was not successful.

D. Preliminary Motions

Hearing Officer Broyles dismissed all of Petitioner's non-IDEA claims as well as IDEA claims that arose outside the one-year statute of limitations in Order No. 2 issued on December 13, 2016. Petitioner's Request to Amend or To Include *** as a Co-Respondent was denied in Order No. 5 issued on February 10, 2017. Petitioner's request to authorize a non-attorney representative was denied as untimely in Order No. 8 issued on February 17, 2017.

II. DUE PROCESS HEARING

The due process hearing was conducted on February 23-24, 2017. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's mother, Ms. ***. Ms. ***'s *** attended the first day of the due process hearing.

Christa Dillard, Educational Advocate, assisted Ms. *** but did not act as Petitioner's non-attorney representative. Ms. Dillard was present for both days of the due process hearing.

Respondent continued to be represented by its legal counsel Jan Watson with the law firm of Walsh, Gallegos, Trevino, Russo & Kyle. In addition, ***, the Director of Special Education for the charter school, attended the hearing as the party representative.

The due process hearing was open to the public. At the conclusion of the hearing the parties requested the record remain open in order to allow submission of written closing arguments. The parties also requested an extension of the decision due date by three business days to allow the hearing officer an adequate opportunity to complete a review of the extensive record on file in this case, conduct the requisite legal research, and consider the written closing arguments in preparing the decision. The Decision in this case was extended, at the request of the parties, to April 25, 2017 t od15(t)-62(r).002 Tc 0Tc 0.07 Tw T* [(r)3(e)4(c)4(or)3(d on)-10(f)3(i)-o. se D

4. Whether Student needs Assistive Technology (AT) in order to receive FAPE and whether the charter school failed to provide it;
5. Whether Student needs a behavior plan to address behavioral needs in order for Student to receive FAPE because the charter school requested *** during the school day;
6. Whether Student needs training on the *** (***) in order for Student to receive FAPE and whether the charter school failed to provide it;
7. Whether Student and Student's parents need in-home and parent training in order for Student to receive FAPE and whether the charter school failed to offer or provide it;
8. Whether the charter school failed to implement the "****" and whether Student needs that curriculum in Tc 0 T821pt -o43dT t5-0.04 Tc 0.04 Tw -26.22 -1.15Po(P)-8(6(o)0r)3(Tw -26.(t)

- 7. Place Student at a private school of parent’s choice at the charter school’s expense; and,
- 8. Provide Student with compensatory services in ***, ***, ***, (***) and ***, (***)

V. FINDINGS OF FACT

- 1. Student is a ***-year-old child eligible for special education services from the charter school as a student with *** (***) and *** (***)¹.
- 2. Student was initially provided with special education services by *** (***) beginning at age ***. Student was first identified as eligible for special education by *** through a Full Individual Evaluation (FIE) with a report issued on ***.² Student’s three year re-evaluation is due ***.³ ***.⁴
- 3. *** are *** disabilities that affect *** and ***. *** and ***. These criteria are generally *** and adversely affect the student’s educational performance.⁵
- 4. At age ***, Student exhibited many characteristics and symptoms of *** including severe impairments in Student’s *** and *** and abilities, Student’s limited ability and ***, and Student’s frequent *** and behavioral responses.⁶ Student exhibits profound deficits in the areas of *** and ***, *** and, specifically, in *** and ***.⁷
- 5. Student also has *** ***. ***. ***. *** and is a common condition associated with ***.⁸
- 6. Student needs educational tasks and activities that offer Student *** and opportunities for mastery in order to foster *** development and ***. Student needs specific tasks and activities that are reinforcing for Student and that encourage generalization and application of learned skills across settings.⁹
- 7. The severity of Student’s *** poses difficult challenges for ***. Student needs both

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DECISION OF THE HEARING OFFICER

13. *** also proposed the following special education services: *** (***) direct instruction and consult, *** (***) consult, and, *** and *** direct and consult therapy. *** proposed Student's placement in a special education classroom with *** minutes per day in the general education *** (***) classroom and *** minutes per day in general education *** classes.

according to the *** (***).²⁷

19. Student began attending Uplift on August 8, 2016 – the first day of school for the 2016-2017 school year.²⁸ Uplift is a non-profit public charter school network. Uplift operates seventeen campuses with thirty six schools in the Dallas area. Some campuses include a primary, middle, and a high school. The total student population in the Uplift network is 16,000 students. Student enrolled in the Uplift *** campus. The *** campus includes *** through *** grade. ***.²⁹

20. ***. The estimated total student population on the *** campus is *** students.³⁰ The *** campus is *** school. ***.³¹ The goal at Uplift ()Tu8.04 J 0 Tc 0.03 Tw 12 -0 theJ 0 E,7(y)

24. A “transfer ARD” convenes when a special education student transfers into the Uplift network. The IEP goals and objectives from the student’s prior school district are accepted by Uplift and implemented as closely as possible in a placement that approximates the previous placement for a thirty day period. Within that initial thirty days another ARD convenes to determine what works best for the student on the campus and revise the IEP as needed.⁴⁰
25. A transfer ARD for Student convened on August ***, 2016.⁴¹ At the transfer ARD Uplift accepted and adopted the *** IEP designed in May 2016. Uplift accepted Student’s eligibility for special education as a student with *** and ***.⁴² The IEP adopted and implemented by Uplift included IEP goals and objectives for reading (***), math (***), ***/***, *** (***), ***, and ***/***. Uplift *** to provide certain related services for special education students at Uplift. *** provides Student with *** services. The charter school reviewed the *** FIE and the *** IEE in adopting the *** IEP. The charter school began collecting data and preparing documentation as soon as Student began receiving special education services.⁴³
26. Each IEP included a set of measurable(of)3nmeasururhoolki beho /LBoC-1(S)-4(-McTc 0 T)5mo

and provided consent for the provision of special education services.⁴⁶

28. Another ARD convened on August ***, 2016 and reconvened and was completed on August ***, 2016 (collectively the August 2016 ARD). The August 2016 ARD agreed Student continued to qualify for special education services as a student with *** and ***.⁴⁷ The August 2016 ARD considered Student's present levels of academic achievement and functional performance (PLAAFPs) in academics and in the functional

for implementing the *** at the August 2016 ARD.⁵⁵ Ms. *** shared a *** *** with the charter school until January 2017 when the *** assistant created one to use at school.⁵⁶

33. There are several levels of mastery in the ***. Student made good progress in using the *** at the *** to increase Student's ***. At the time of the due process hearing Student was beginning to work at the *** ***.⁵⁷ Student now uses both *** to ***.⁵⁸ The ***. It will be appropriate for Student to advance to the use of a more complex *** once Student's mastered the *** ***. *** might be appropriate.⁵⁹
34. *** ***. *** ***.⁶⁰ Uplift provided Student with a *** this school year.⁶¹ Uplift implemented both the *** and *** during the 2016-2017 school year.⁶²
35. Ms. *** advocated teaching Student *** beginning with the transfer ARD on August ***, 2016.⁶³ In private *** Student recently learned *** and is currently working on *** ***." Student is also working on *** but requires ***.⁶⁴ An updated assessment by *** in October 2016 recommended considering teaching Student *** to facilitate ***. ***. The private *** plan in October 2016 did not specifically include teaching Student ***. The charter school employs ***** with Student in the general education classroom.⁶⁵
36. An ARD convened on September ***, 2016 (September 2016 ARD). A copy of procedural safeguards was provided to Ms. ***. A Review of Existing Evaluation Data

acquisition of ***, and staff training were addressed at the ARD. The ARD also explained to Ms. *** the set of accommodations and positive reinforcers being implemented at school. Ms. *** shared her insights and suggestions. A parental request for assignment of a dedicated *** was taken under advisement by the charter school pending the outcome of the FBA.⁶⁶

38. The IEP designed at the August 2016 ARD continued to be implemented by the charter school. *** and ***/*** services continued. Student's behavioral needs were addressed in the *** IEP and with behavioral strategies implemented as instructional accommodations. At the time of the September 2016 ARD Student was able to attend to task with a *** teacher-to-student ratio in a small space. Student enjoyed ***.⁶⁷ *** were added to Student's program. The *** training for the special education aides within two weeks of the ARD was implemented as agreed.⁶⁸
39. The FBA was completed on October ***, 2016. Behaviors of concern were Student's failure to consistently follow *** instructions and ***.⁶⁹ An ARD convened on November ***, 2016. A copy of procedural safeguards was provided to Ms. *** at the beginning of the ARD. The purpose of the November ***, 2016 ARD was to review the completed FBA and revise Student's IEP as needed.⁷⁰
40. The licensed specialist in school psychology (LSSP) who conducted the FBA did not recommend a BIP for Student

42. At the beginning of the school year Student had some ***. By the date of the due process hearing Student had not *** for the previous three months. Student also made progress in *** and academic skills. Student responded well to modeling by the teacher and progressed from *** in Student's development of ***.⁷⁵
43. The general education teacher conducts on-going assessments of Student's progress. By the due process hearing Student was making progress and acquiring skills in all areas including *** and ***. Student was making progress and doing well in the general education classroom.⁷⁶ Lessons in the general education classroom are modified by the general education teacher to meet Student's IEP goals. The general education teacher also implements the set of accommodations in Student's IEP.⁷⁷
44. The general education teacher implements *** for Student during the school day to support instruction, as a release from the demands of working, and to address Student's *** needs as a student with ***.⁷⁸ The general education teacher uses a *** with Student. Student is familiar with it and understands it most of the time. Student has reduced the time needed for ***.⁷⁹ Student is beginning to ***. ***.⁸⁰
45. The LSSP also recommended purchase of *** – a special curriculum for students with ***.⁸¹ *** has been implemented with success at other Uplift campuses for students with ***.⁸² *** uses *** to teach prerequisite skills for academic instruction within a classroom routine. *** utilizes one-step directions to meet the *** needs of *** classrooms. *** also employs the functional use of ***.⁸³
46. Charter school personnel recommended fulltime placement in the special education classroom where there was a smaller teacher-to-student ratio. Ms. *** opposed the recommended change in plac-9.84 -1.15 Td [ID SPn

installation of video cameras on the *** campus.⁸⁶

47. A revised set of IEP goals and objectives were presented and discussed at the November ***, 2016 ARD. A proposed IEP for behavior was discussed that addressed Student's need to learn ***. The proposed behavior IEP included the use of positive reinforcement and using ***

51. The *** collaborated with the teaching staff including monitoring and supervising the aides in using the *** with Student. The *** met weekly with the aides and reviewed the *** and Student's progress.⁹⁴ She provided overview training to the teachers and aides who work directly with Student on how to implement the ***.⁹⁵ She monitored, supervised and supported the *** assistant in the implementation of the *** IEP, the ***, and *** collection. They met weekly. The *** assistant worked collaboratively with the aides to implement the ***.⁹⁶
52. Although Ms. *** signed a consent form to allow the private *** at *** to confer with Uplift attempts to connect with the *** *** were not successful.⁹⁷ The *** collaborated with Student's teachers and other school staff. A second *** took over in mid-September and continued the collaboration with the teachers and other staff in implementing Student's *** IEP.⁹⁸
53. The general education *** classroom teacher and special education teacher were both trained on *** in January 2017.⁹⁹ They began implementing the curriculum thereafter. *** emphasized teaching basic skills through assessment. Each lesson is based on an assessment score. For example, the general education teacher uses *** to teach Student to ***. Data is collected and measures how long it takes for Student to respond. Student's behavior improved and Student is responding well to ***.¹⁰⁰
54. Uplift requires *** *** to be certified.¹⁰¹ Uplift also requires its teachers to maintain their teacher certifications during their entire tenure of employment, including special education teachers.¹⁰² Instructional aides are not required to be certified. However, all charter school personnel involved in Student's education, including classroom aides, are all duly certified. This includes the LSSP who conducted the FBA, the ***, the ***, and the *** assistant.¹⁰³ The *** general education *** teacher is currently working on her Texas teaching certificate and a Master's degree in ***. She has a B.S. in Child Development and 4-5 years' experience teaching ***.¹⁰⁴

⁹⁴ Tr. II:532.

⁹⁵ Tr. II:506-507.

⁹⁶ R. 11:63; Tr. II:528-529, 530-531.

⁹⁷ Tr. I:122, 159-160; Tr. II:533.

⁹⁸ Tr. II:432, 436-437, 443, 445-447.

⁹⁹ Tr. I:195; Tr. II:486.

¹⁰⁰ Tr. I:204-205.

¹⁰¹ Tr. I:267.

¹⁰² Tr. II:384, 386.

¹⁰³ R. 12; Tr. II:387.

¹⁰⁴ Tr. I:178-179, 198, 271; R. 12:14-15.

55. The need for in-

education services to Student with its own special education staff and related service providers. The special education staff and related service providers worked collaboratively with the *** general education teacher in providing the instruction and services Student needed under Student's IEP. Therefore, there was no "notice" required to the parent that special education was not being provided in the *** class because it was provided.

E. IEP Goals and Objectives Issues

Petitioner contends Student did not meet Student's IEP goals and objectives in ***, ***, or academics. The evidence showed that Student met some of the IEP goals and objectives, has not yet mastered others, and is making progress towards others.

Petitioner also contends the charter school unilaterally revised Student's IEP goals and objectives when Student failed to master or meet them. The evidence showed that some of Student's IEP goals and objectives were revised to better meet Student's needs. The evidence showed revised IEP goals and objectives were proposed and discussed in ARD meetings where parental concerns were expressed and considered. The evidence showed Ms. *** ultimately agreed with the set of revised IEPs at the November ***, 2016 ARD. Petitioner did not meet Petitioner's burden of proving IEP goals and objectives were unilaterally revised outside the ARD process or without parental input or that the revised IEP goals were somehow not appropriate.

F. Staff Training

Petitioner contends charter school staff lacked sufficient training in teaching Student *** – a *** Petitioner contends Student needs. Petitioner also contends charter school staff lacked sufficient training in teaching Student ***. The evidence shows charter school staff are not particularly skilled in the ***. However, Petitioner did not prove Student needs *** over other methodologies in order to ***. The evidence showed *** requires *** and Student's *** are still developing. Even the private *** did not focus on teaching Student *** but instead addressed Student's ***, teaching only *** at a time. Given Student's *** Student will learn

*** more quickly with strategies that use ***, as opposed to *** skills.

Petitioner did not prove *** was either Student's *** or that it was the only method of *** appropriate for Student. The evidence shows the charter school used other *** (such as the ***, the ***, and ***) to support the development of Student's ***. The evidence showed that all charter school staff who worked directly with Student had sufficient training in tea4(nt)0.66 0 Td Tw

at school. Periodic parent-teacher conferences or written communications between home and school can fulfill this function. Ensuring clear communication between home and school might reduce confusion or parental anxiety over Student's pathways to learning.

L. ***

The evidence showed the charter school is implementing *** following the recommendation of the FBA and as a result of the consensus reached at the November ***, 2016 ARD meeting. The evidence suggests Student began to make progress last fall, without implementation of this particular curriculum, as Student became acclimated to Student's new campus and classrooms. The evidence also shows implementation of *** is appropriate for Student and gives the regular education teacher (with the inclusion support of the special education aides) an instructional road map based on assessment to follow in meeting Student's needs.

M. Failure to Document Activities and IEP Progress in Special Education Classroom

avoid incurring the expense of video camera installation rather than considering Student's needs. There was very little, if any, evidence to support such an inference.

The evidence showed placement decisions were not made in response to a parental request for installation of video cameras in the special education classroom. Instead, the evidence showed charter school staff recommended full time placement in the special education classroom because it would provide Student with a smaller instructional setting and a smaller teacher to student ratio that would meet Student's needs. Student's mother advocated the opposite – fulltime placement in the general education

in the special education setting.

VII. FAPE

A. 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:

- x The program is individualized on the basis of the student's assessment and performance;
- x The program is administered in the least restrictive environment;
- x The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and,
- x Positive academic and non-academic benefits are demonstrated. *CypressFairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5r. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program for reimbursement purposes. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5r. 2009). Application of the four factors to the evidence in this case supports the conclusion that the charter school's program was appropriate and provided Student with FAPE.

B. Individualized on the Basis of Assessment and Performance

First, the evidence showed the charter school district's program was individualized on the basis of assessment and performance. The charter school reviewed the *** FIE and the *** IEE as well as teacher observations and student performance in adopting the ***. Additional data, including classroom performance, was used to revise Student's IEP to better meet Student's *** and behavioral needs. The evidence showed that with the implementation of *** the *** lessons

equipment, devices, and curriculum materials. Home and school shared *** until the charter school prepared its own *** for use at school. The special education teacher collaborated with and supervised the special education aides who provided inclusion support in the general education ***

