

**BEFORE A SPECIAL EDUCATION
HEARING OFFICER FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

**STUDENT, b/n/f/ PARENT,
Petitioner**

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v.

DOCKET NO. 039-SE-1013

**LEWISVILLE INDEPENDENT
SCHOOL DISTRICT,
Respondent**

PETITIONER: Pro Se

REPRESENTING RESPONDENT:

**Parent
(Address Redacted), Texas**

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LEWISVILLE INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS

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Statement of the Case

Petitioner *** (“the Student”), by next friend, *** (“the Parent”), requested a due process hearing pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, against Respondent Lewisville Independent School District (“LISD” or “the District”).

Parent appeared *pro se* throughout this litigation. Nona C. Matthews and Michael J. Clark, attorneys with the firm of Walsh, Anderson, Gallegos, Green & Treviño, P.C. in Irving, Texas, represented Respondent. The Texas Education Agency (“TEA”) received this due process complaint and issued the notice of filing on October 7, 2013. The initial procedural schedule set the due process hearing for November 22, 2013, and the Decision Due Date for December 21, 2013.

There have been four insufficiency challenges filed, three granted for good cause shown, and three amended complaints filed. On December January 3, 2014, Respondent’s Partial Motion to Dismiss filed with the fourth insufficiency challenge was granted and the applicable one-year statute of limitations determined to run from December 18, 2012.¹ There has been one unopposed continuance, granted for good cause shown, extending the Decision Due Date to April 10, 2014, to allow a two-day setting on February 26-27, 2014, and to allow the parties to file written closing statements in lieu of oral closing arguments by March 27, 2014. The due process hearing took place as an open hearing on February 26-27, 2014, at the Lewisville ISD Special Education Department, 136 Purnell Street, Lewisville, Texas 75057.

The parties timely submitted their written closing statements and the record closed on March 27, 2014. The Decision of the Hearing Officer was timely issued on April 10, 2014.

Petitioner complains of the following actions or inactions of Lewisville ISD during the pertinent period:

¹ On December 10, 2012, Petitioner’s claims settled by a mediation agreement in October 2012, claims of unethical behavior by District administrators, request to have the Texas Education Agency monitor the District, claims of a discriminatory technology District policy and disputes regarding the Parties’ Mediation Agreement dated October 12, 2012, were dismissed for lack of jurisdiction. On January 3, 2014, claims falling outside the statute of limitations period of December 18, 2012, were dismissed.

1. Whether Respondent timely completed and implemented the Student's functional behavioral assessment ("FBA") and behavioral intervention plan ("BIP") documented in the Admission, Review, and Dismissal Committee ("ARDC") meeting of January 15, 2013;
2. Whether Respondent included the Parent as a full participant in the Student's ARDC process, including consideration of parental input at the Student's January 2013 and April 2013 ARDC meetings regarding the Student's: a) academic progress based on parentally-provided therapies delivered outside of school hours; b) behavioral needs, including appropriate punishment and positive reinforcement needs; c) learning style needs resulting from Hyperlexia; d) private placement progress at ***, including successful strategies; and, e) Petitioner's parentally-obtained evaluation results;
3. Whether Respondent complied with procedural notice requirements for the Student's ARDC meetings, including notice for a planned ARDC meeting on March 19, 2013;
4. Whether Respondent provided the Parent with accurate information about the Student's behavioral and academic progress during the pertinent period in accordance with 34 C.F.R. 300.324(b);
5. Whether Respondent properly provided the Parent access to and provided copies of the Student's records the same in accordance with 34 C.F.R. §§300.613, 300.616, and 300.617;
6. Whether Respondent provided the Student with an appropriate Individualized Education Program ("IEP") in the least restrictive environment ("LRE") that resulted in progress rather than regression on mastery of behavioral and academic goals;
7. Whether Respondent's educational program for the Student included appropriate speech/articulation and handwriting goals that enabled the Student to progress rather than regress;
8. Whether Respondent provided appropriately-trained staff to work with the Student for positive behavior reinforcement and to address off-task behavior;
9. Whether Respondent appropriately assessed the Student's behavior and developed a BIP that considered the Student's : a) verbal behavioral needs; b) behavioral history of Applied Behavior Analysis ("ABA"); and, c) response to positive reinforcement techniques;
10. Whether Respondent failed to offer necessary summer services to the Student during the applicable period;
11. Whether the Parent is entitled to reimbursement for the parental private school placement of the Student beginning *** 2013 because Respondent timely failed to provide the Student a free appropriate public education ("FAPE");
12. Whether the Student is entitled to prospective private school tuition at public expense at ***, due to Respondent's inability to provide a FAPE for the Student;
13. Whether the Parent is entitled to reimbursement for mileage for travel to *** beginning *** 2013 forward;
14. Whether the Parent is entitled to reimbursement for participation costs and travel expenses in the *** ("***) incurred during the pertinent period due to denial of FAPE by Respondent; and,
15. Whether the Parent is entitled to reimbursement for costs and travel expenses for speech and occupational therapy ["OT"] services incurred during the pertinent period due to a denial of FAPE by Respondent.

As relief, Petitioner seeks the following:

1. Reimbursement for services received or incurred from December 18, 2012, forward:
 - a. Up to 90 sessions of private combined speech and OT sessions and up to 12 months of Autism treatment programming at *** for 2012 services;
 - b. Up to \$3,200.00 annual out-of-pocket/in-network co-insurance costs incurred by the Parent in 2012; and,
 - c. Up to 100 miles per week for mileage expenses incurred to attend private therapy services for the Student through August 2013;
2. Reimbursement of private services for the Student in 2013 of \$1,200.00, including 46 speech and occupational therapy services;
3. Reimbursement of \$1,350.00 for ABA services for the Student through ***;
4. Reimbursement of \$2,035.00 for a full-time ABA summer program at ***;
5. Reimbursement of \$4,400.00 for private placement at *** from ***, 2013, through the end of the 2012-2013 school year;
6. Reimbursement of *** miles a week for the Student's attendance at *** beginning ***, 2013;
7. Prospective placement at *** at school district expense until Respondent provides the Student an appropriate placement implemented by properly trained and knowledgeable staff that includes: a) an ABA/Verbal Behavior Analysis plan; and, b) curriculum developed by Behavioral Innovation or other qualified ABA service provider; and,
8. Provision of previously promised compensatory speech services for the Student.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

Background

1. The Student resides within the jurisdictional boundaries of the District with student's parents and sibling. At the time of the hearing, the Student was ***-year-old and attended ***, a private school in ***, Texas. [Pleading file; J.Exs. 4 at 1 and 15 at 2; Tr. at 92 and 101].²

2. The Student attended LISD from 2009 through ***, 2014. At the time of withdrawal, the Student qualified for special education services due to Au and SI. [Pleading file; J.Ex. 1].

3. The Student's early language development of the Student progressed normally until age 15 months. At that point, the Student became unresponsive when called by name and could no longer speak previously-mastered words. At age three and a half, the Student attended *** School and received speech and language therapy through *** and through ***. [J.Exs. 1 at 3 and 9 at 1-2].

4. The Parent believes that the Student learned to talk using "Reader Rabbit." By the beginning of ***, the Student mastered the alphabet and spelled many *** words. From

² Exhibits are abbreviated by the following designations: Petitioner's Exhibits ("P.Ex." or "P.Exs."), Respondent's Exhibits ("R.Ex." or "R.Exs."), Joint Exhibits ("J.Ex." or "J.Exs."), and Transcript ("Tr."), followed by exhibit number and page number following if applicable.

the Student's early days, the Parent had concern about the Student "shutting down" when demands are too high by going under a table or ***, reporting that the Student's abilities increase when in stable situations, but the Student will quickly "crater" when situations are unstable. [Tr. at 442 and 450].

5. The Parent ensured that the Student received outside programming to address the Student's needs including ABA therapy through *** beginning in 2009 for a total of 40 months. In ***, the Student received *** services four afternoons each week. During the last nine months of *** services, the Student received weekly OT sessions and weekly or greater speech sessions through *** and ***, another provider. [Tr. at 432-433].

6. The Parent believes the Student's educational progress is due to the outside therapies provided by the Parent year around rather than from school services. [Tr. at 305 and 453-454].

2009-2010 – * Year**

7. On August ***, 2009, the Student qualified for special education services as a student with Autism ("Au") and Speech Impairment ("SI") while enrolled in *** ISD. *** days later, the Student enrolled in LISD on the *** School campus on August ***, 2009. By October 2009, the Student's ARDC determined that the Student met eligibility requirements for special education services due to Au based on Pervasive Developmental Disorder, Not Otherwise Specified ("PPD-NOS"), and SI. [J.Ex 1 at 1 and J.Ex. 15; Tr. at 253, 370, and 432].

8. *** has a Master's degree in special education with specialization in emotional/behavioral disorders and autism spectrum disorders and is a special education teacher at LISD. *** served as the Student's special education teacher from *** through *** and testified at the due process hearing. In ***, the Student made good progress and remained on grade level in academics yet remained unable to speak in complete sentences. The Student required extensive support for individual and group work and frequently cried, screamed, and had tantrums at school. Although the Student showed a desire to socialize with peers, the Student was unable to do so in ***. *** used "scripting" with the Student to teach needed social skills regarding proper peer interaction, asking questions, and taking turns during games. [Tr. at 521-524].

2010-2011 – * Year**

9. At the start of the *** year, *** collected data to determine whether the Student regressed over the intervening summer break. The Student recouped skills within six weeks and showed no regression. [Tr. at 525].

10. In ***, the Student appeared more at ease, participated with cooperative peer group floor activities, and increasingly used hand raising appropriately. The Student exhibited no physical aggression throughout the year. Beginning in the ***, the Student had reading comprehension goals. At this time, the Student responded well to accommodations of sentence starters and pictures, completed work with some teacher and paraprofessional assistance, and required support with comprehension in guided reading groups. [Tr. at 525-526 and 533].

11. During a unit on different types of *** mid-way through ***, the Student began ***. After receipt of the Parent's input, a BIP was put in place to address this behavior. [Tr. at 526].

2011-2012 – * Year**

12. At the beginning of ***, the Student recouped skills and showed no regression from the summer break at the end of the first six-week period. The Student's IEP continued reading comprehension goals in the ***. [Tr. at 527 and 533].

13. The Student got along well with peers. As the Student's speech was more understandable now, classroom peers engaged in more conversations with the Student. The Student increasingly used hand raising appropriately and showed enthusiasm about the curriculum. [Tr. at 527].

14. The District uses the Diagnostic Reading Assessment ("DRA") as one measure determine whether a student is making reading progress. Generally, scores in the *** are for *** students and scores in the *** are for *** students. A student's DRA is expected to increase within a school year to show that the student is reading at a higher level. The DRA reading level does not have to increase if the student's comprehension is increasing to an independent level. On the mid-year administration of the DRA, the Student scored at the beginning *** level at a level ***. [J.Ex. 1 at 25; Tr. at 265 and 232-233].

15. The District performed a preliminary speech evaluation of the Student on February 14, 2012, using informal evaluation by LISD speech-language pathologist ("SLP") ***. The Student exhibited articulation within normal limits with a stimutable and inconsistent error on the "****" phoneme, was easily understood by others, and had a voice within normal limits. *** concluded that the Student had dysfluencies and variation in speech within normal limits. [J.Ex. 1 at 10].

16. The District completed the Student's most recent FIE on May 1, 2012. This FIE reviewed all areas of suspected disability and addressed academic, cognitive, motor, and sensory functioning. The FIE addressed the Student's needs and abilities using over 14 tests in areas of: a) speech; b) articulation; c) expressive, receptive, and pragmatic areas of language; d) behavior; e) social functioning; and, f) assistive technology ("AT"). [J.Ex. 1].

17. The 2012 FIE administered the Autism Spectrum Rating Scales ("ASRS"), a behavioral rating scale filled out by the Parent, and the Student's general education teacher, ***. Both ASRS ratings indicate that the Student exhibits symptoms associated with an Au spectrum disorder such as difficulty relating to adults and children, using language in an atypical manner, engaging in stereotypical behaviors, difficulty in tolerating changes in routine, and overreaction to sensory stimulation. [J.Ex. 1 at 27-28].

18. The May 2012 FIE administered the Autism Diagnostic Observation Schedule ("ADOS"), a semi-structured, standardized assessment of communication, social interaction, and play or imaginative use of materials and consists of four modules based upon speech and language abilities and age level. Overall, the Student's Communication and Social Interaction Total Score on the ADOS exceeded the threshold for classification of Au. [J.Ex. 1 at 28-29].

19. Two licensed SLPs employed by the District, *** and ***, assessed the Student's speech and language on the May 2012 FIE with two formal measures. The first measure, the Comprehensive Assessment of Spoken Language ("CASL"), measures comprehension, expression, and retrieval processes in the areas in four language categories of Lexial/Symatic, Syntactic, Supralinguistic, and Pragmatic. On the core testing bands for ages *** through ***, the Student scored within the average range for both receptive and expressive language with a receptive language standard score of 86 and an expressive language standard score of 92. On the Pragmatic Judgment Subtest, the Student scored a standard score of 82, or one to two deviations below average, a score consistent with the Student's diagnosis of Au. [J.Ex. 1 at 12-14 and 34; Tr. at 567-568].

20. The second language assessment on the May 2012 FIE, the Clinical Evaluation of Language Fundamentals – 4th Edition ("CELF-4") (***), evaluates a student's general language ability for development of an IEP using four subtests and considering language strengths, communication needs, parental concerns, and need for AT. The Student's CELF-4 scores show the likelihood that the Student would have difficulty understanding instructions in the classroom that could impact the Student's reading comprehension. Results also indicated the likelihood that the Student would have difficulty explaining things expressively in a classroom situation. [J.Ex. 1 at 14-16 and 34; Tr. at 569-570].

21. The speech/language portion of the May 2012 FIE included the Children's Communication Checklist – Second Edition, U.S. Edition ("CCC-2") to assess communication skills in the areas of pragmatics, syntax, morphology, semantics, and speech. The Parent and the Student's general education teacher, ***, filled out the checklist. On the Parent ratings, the Student scored a standard score of 60 or significantly below average functioning when compared to same age peers in the norm population. On the teacher's ratings, the Student made a standard score of 70 or below average functioning when compared to same age peers in the norm population. The teacher noted concerns in areas of coherence, nonverbal communication, understanding non-literal language, and organizing thoughts to express meaning clearly. [J.Ex. 1 at 17-19].

22. The Social Interaction Difference Index ("SIDI") on the CCC-2 is a special index score designed to help identify children with characteristics of language impairment or Au. On the Parent's ratings, the Student's SIDI was +13, indicating stronger pragmatic/social language than overall language skills. On the teacher's ratings, the Student's SIDI was -2, indicating pragmatic language commensurate with overall language skills. [J.Ex. 1 at 19].

23. In the May 2012 FIE report, the two evaluating SLPs noted the Student's abilities and difficulties in receptive and expressive language as follows: a) strengths in understanding and using vocabulary; b) difficulties in responding on topic, following directions (temporal concepts and more than one step with a conditional clause), and formulating grammatical sentences; and, c) difficulties with nonverbal communication elements and non-literal concept difficulties noted by the Parent and general education teacher. [J.Ex. 1 at 29-30].

24. In the May 2012 FIE report, evaluators determined that the Student could articulate and produce all speech sounds in all positions of words in phrases, sentences, and conversation with the exception of an inconsistent error on the "****" phoneme. When given a

model of the “***” phoneme, the Student could produce the “***” phoneme in all positions of words and in sentences. [J.Ex. 1 at 10-11 and 30].

25. At the time of the May 2012 FIE, the Student received speech therapy services for 30 minutes twice a week, once in the general education setting and once in the special education setting. The Student also received OT services 30 minutes once a week, had a BIP in place, and received accommodations in the general education classroom. [J.Ex. 2 at 3; Tr. at 566].

26. Assessment of reading on the May 2012 FIE showed that the Student worked within the average range in basic reading, math calculations, math reasoning, reading fluency, and written expression. The Student worked in the below average range in reading comprehension and spelling, results also corroborated by informal classroom observation. At the time of the May 2012 FIE report, the Student’s general education teacher had not completed the end of the year DRA testing, but believed that the Student had acquired the ability to read up to a level ***. [J.Ex. 1 at 25].

27. The May 2012 FIE reviewed the previous January 2012 evaluation of the Student’s related service needs that recommended 30 minutes of direct OT services per week. The FIE report recommended continued help of OT services “as necessary” for the Student to address fine motor and handwriting deficits and recommended ARDC consideration of continued special education counseling to teach social skills and coping mechanisms. [J.Ex. 1 at 29-30].

28. The May 2012 FIE determined that the Student met eligibility for special education as Au and SI with related services of OT and special education counseling. The written report included recommendations for the Student within the classroom. [J.Ex. 1 at 37].

29. As of the May 2012 FIE report, the Student received instruction in the general education classroom with based on the Texas Essential Knowledge and Skills (“TEKS”) state standards for *** with inclusion support in reading/language arts/social studies for 150 minutes per week with accommodations. The Student also received 60 minutes of speech therapy per week, 30 minutes of OT services once a week, and 30 minutes of special education counseling every other week. [J.Ex. 1 at 25].

30. *** observed the Student become upset and cry on six or seven occasions during ***. *** interpreted this behavior to indicate the need for added supports for the increasing rigorous curriculum. [Tr. at 528].

31. On May 8, 2012, the District conducted an FBA to address the Student’s verbal outbursts of yelling and crying. *** participated in this evaluation as well as ***, Student’s general education teacher, and ***, an LSSP employed by LISD. The FBA recommended a BIP for the Student and did not find a need for further data collection or for ABA therapy. [J.Ex. 2 at 8-9; Tr. at 528].

32. The Student responded well to the increased visual supports during the remainder of the *** year. On a couple of occasions, the Student went with *** to the Resource Room to talk over peer situations and then to re-enter the classroom to try the peer interaction again. *** found the Student responsive to her directives. [Tr. at 529].

May 2012 ARDC Meeting

33. On May 14, 17, and 30, 2012, the ARDC convened for the Student's annual ARDC meeting with the Parent in attendance for development of the Student's IEP for the 2012-2013 school year. Participants reviewed the May 2012 FIE report, the Student's current present levels of academic achievement and functional performance ("PFLAAPS"), and parental input. The ARDC developed goals and objectives and a BIP based on the FBA completed on May 8, 2012. The goals and objectives developed over this multi-day meeting included handwriting goals through development handwriting and typing skills, articulation goals, AT, and related services goals for OT, speech therapy, counseling, and special education counseling. [J.Ex. 2; Tr. at 565-575].

34. The Parent actively participated in all three days of May 2012 ARDC. On the first day of the May 2012 ARDC meeting, the Parent proposed goals to be added to the proposed drafted goals. At the conclusion of the second day of the May 2012 ARDC, the Parent expressed discontent with the proposed goals and May 2012 FIE, requested independent educational evaluations ("IEEs") for speech and OT, and the ARDC members agreed to a ten-day recess to reconvene on May 30, 2012. The meeting ended in disagreement with the participants agreeing to reconvene in August to consider completed IEEs and make any necessary modifications. [J.Ex. 2 at 36-44].

35. The 2012-2013 IEP developed at the May 2012 ARDC meeting placed the Student in *** general education classes with inclusion support and pull-out speech therapy. The Student's BIP included positive behavioral supports of scripting, modeling, increased processing time for behavior discussion, visual de-escalation strategies on desk, provision of a quiet area, role-playing, distraction of the Student with a transition activity or question, replacement behavior teaching, visual closure of incidents, and social stories. [J.Ex. 2].

36. The May 2012 ARDC agreed to provide the IEEs in speech and OT as requested by the Parent. The ARDC also offered the opportunity for parent training, but the Parent refused these services. [J.Ex. 2 at 18-19, 36-39, and 44; Tr. at 577].

37. The May 2012 ARDC agreed to provide compensatory speech therapy services because of parental concerns that speech hours had not been properly documented. The *** School campus principal, ***, clarified at hearing that all the speech hours had, in fact been provided. Because the documentation did not show precisely what had been worked on in the sessions, the ARDC agreed to provide the hours. [J.Ex. 2 at 34, 39, Tr. at 373-375 and 580-581].

38. *** considers the communication she has had with the Parent from *** forward to be open with a trusting rapport. *** and the Parent often spoke about how the Student's day had been while *** served as *** during the Student's *** year. Because the Parent actively served in the Parent-Teacher Association at the Student's campus, *** frequently visited with the Parent during school in the hallways. [Tr. at 443 and 530].

39. At the end of ***, the ARDC did not recommend ESY based on data collected by the District as the Student showed no regression that could not be recouped within six weeks. [J.Ex. 2 at 17; Tr. at 530].

***** Testing – June 2012**

40. The Parent had the Student’s speech assessed at the *** on June 7, 2012. On the Goldman-Fristoe Test of Articulation-2, the Student made the following scores: Standard Score: 65; Percentile Rank: 3; and, Age Equivalent: 4 years, 1 month. The report found that the Student exhibited consistent articulation errors in voice and voiceless “***,” ***, and ***. The Student made errors in the initial, medial and final positions at word level. [J.Ex. 3 at 3; P.Ex. 9 at 13-17].

***** Evaluations – July and August 2012**

41. On July 30, 2012, *** performed the speech and language IEE requested by the Parent at the May 2012 ARDC. The IEE reviewed the previous testing of the Student and administered the Oral and Written Language Scales – II (“OWLS”) to assess the Student’s receptive language skills of vocabulary, comprehension of sentence and word structure, and to assess expressive language skills of vocabulary, sentence and question formulation, morphology, and syntax. Standard scores have a mean of 100 and a standard deviation of 15. Percentile ranks have an average. Age equivalent scores are an average and indicate that a student performed somewhere within that range. On the OWLS Form A, the Student received the following scores:

OWLS Form A	Standard Score	Percentile Rank	Age Equivalent	Description
Listening Comprehension:	***	***	***	Below Average
Expression:	***	***	***	Deficient
Oral Language Composite:	***	***	(not applicable)	Deficient

Based on the OWLS scores, the Student’s receptive language is more than one standard deviation below the mean and expressive language is more than two standard deviations below the mean, indicating the presence of a moderate to severe language disorder. [J.Ex. 3 at 2].

42. The *** speech IEE also administered the Celf-4 Pragmatic Profile, a criterion-referenced subtest designed to identify verbal and nonverbal pragmatic deficits that may negatively influence social and academic communication. The Student’s score is compared to an absolute standard (criterion) of performance that is greater than 132. The Parent and the *** (“****”) case manager separately filled out the profile. By the Parent’s report, the Student scored at ***, meeting the criterion score for the Student’s age range, and identified pragmatic concerns of repetitive/redundant language, appropriateness in conversation, and interpretation and use of nonverbal communication. By the *** case manager’s report, the Student scored at *** or *** points below the criterion score, indicating the presence of a pragmatic language disorder. Concerns of the *** case manager include areas of rituals and conversational skills, asking for, giving, and responding to information, and interpretation and use of nonverbal communication skills. [J.Ex. 3 at 2-3].

43. The *** speech IEE did not include additional articulation testing due to recent testing by *** in June 2012, but noted that informal observations throughout the speech IEE were consistent with that testing. The evaluating SLP found the Student’s voice/fluency and oral mechanism to be within normal limits and did not note any dysfluencies. The SLP concluded that the Student had a developmental language disorder with severe expressive

delays and moderate-severe pragmatic delays and also a moderate articulation disorder characterized by deviant production of four phonemes. The Student's deficits impact ability to communicate needs, wants, and ideas effectively within environments warranting skilled intervention. The SLP recommended 30-45 minutes of individual speech-language treatment once or twice a week and the same amount of group speech-language sessions over six months to a year, depending on progress. The report included suggested speech and language goals to address the Student's deficits. [J.Ex. 3 at 3-4].

44. On August 1, 2012, an *** occupational therapist performed an OT IEE of the Student as requested by the Parent in the May 2012 ARDC meeting. The Parent expressed concern to the evaluating occupational therapist about sensory processing problems that impact the Student's ability to attend and control school behavior as well as handwriting difficulties. As part of the evaluation, the occupational therapist spoke with ***, the Student's current LISD occupational therapist. *** reported that the Student had occasional outbursts because of challenges required for learning, but the outbursts are rarely associated with speech. [J.Ex. 4 at 1-2].

45. The *** OT IEE noted slight improvement of the Student's grip strength since the last clinical evaluation in May 2012 and was not able to fully assess the Student' for a sensory assessment secondary to age. Relying on parental information, the occupational therapist noted the Student's possible sensory impacts and reasons for the Student in the school setting as follows: a) increased inappropriate behaviors before or during lunch because the Student is anticipating the odors and tastes about to be experienced in the lunch room; b) increased aggressive responses to others or choosing to sit, stand, and walk apart from others after accidental touching by others because of the Student's difficulty touching textiles; and, c) rough housing, sitting on hands and feet, hand flapping, fidgeting, and seeking pressure on extremities from clothing and cushions because the Student attempts to manage the body's response to sensory stimuli through the body's proprioceptive system. [J.Ex. 4 at 3].

46. The OT IEE included assessment the Bruininks-Oseretsky Test of Motor Proficiency Second Edition ("BOT-2"), an instrument designed to assess motor functioning. On the BOT-2, the Student scored in the average range for fine motor precision, fine motor integration, and manual dexterity and scored in the below average range for upper-limb coordination. Overall, the Student's composite scores on the BOT-2 were as follows: Fine Manual Control – Standard Score: 50 (50th percentile); and, b) Manual Coordination – Standard Score: 40 (16th percentile). [J.Ex. 4 at 5].

47. The *** OT IEE also administered the Sensory Profile, a questionnaire completed by a caregiver that measures a child's sensory processing skills and their impact on daily function. Based on the Parent's ratings, most of the Student's scores fell in the "Definite Difference" range suggesting that the Student has behaviors indicative of sensory processing dysfunction, including registration, modulation, and organization or integration of sensory input. [J.Ex. 4 at 5-6].

48. The Beery Developmental Test of Visual-Motor Integration ("VMI") is an assessment that evaluates a child's ability to translate with hands what is visually perceived and has a high correlation with tests of handwriting. On the VMI portion of the *** OT IEE, the Student's scores showed capacity to improve in handwriting and produce a functional and legible handwriting product. Because the Student made below average scores on the VMI

when precision is required, the Student's handwriting would likely be below average when writing in small areas or perfect alignment on lines. As the Student did not complete the motor subtest within the time limits, the evaluating occupational therapist noted that handwriting legibility decreases with increased speed or pressure to produce work at a faster speed. Likewise, test copying skills and legibility of handwriting usually diminish during composition because cognitive attention is divided between choosing what is to be written and constructing the written form. [J.Ex. 4 at 6-7].

49. Results of the *** OT IEE showed that the Student possessed satisfactory sensory processing for ideal situations of one-on-one instruction, limited visual distractions, and work or social interactions with minimal challenges, but demonstrated a heightened response to typical stressors and poor selection of modulating proprioceptive techniques. Clear expectations, safe emotional and physical environment and a relatively consistent routine can reduce some of the stress that may lead to the emotional outbursts and tantrum behavior for the Student. [J.Ex. 4 at 7].

50. The *** IEE report made 12 recommendations for the Student's school program, including 30 minutes weekly of direct and consult OT services with goals addressing handwriting and sensory processing/modulation during challenging learning situations, continued use of IEP modifications and accommodations, inclusion of sensory breaks throughout the school day, and use of visual prompts and cues to display a daily schedule to help with transitions. [J.Ex. 4 at 8].

August/September 2012 ARDC Meeting

51. As previously planned, the ARDC convened in August to review the OT and speech IEEs. The meeting took place over four days on August 24 and 29, 2012, and September 7 and 18, 2012, with the Parent in attendance on all days. The ARDC found the two IEE reports to be consistent with the District's evaluations. [J.Ex. 5 at 17-18; P.Ex. 5 at 44-53; Tr. at 583-584].

52. The Student's previous articulation goals were deleted by the August/September 2012 ARDC because the Student did not present with an articulation need in the school setting. [J.Ex. 5 at 17 and 19; Tr. at 585-586 and 589-591].

53. For the first time at the August/September ARDC meeting, the Parent presented the results of two additional evaluations – the June 2012 speech and language evaluation by *** and the completed *** OT IEE. District participants accepted the results of the *** OT IEE. Instead of accepting the June 2012 speech and language evaluation, District participants proposed an articulation assessment by the District to review whether the Student had an educational need for articulation. The Parent gave consent for the District to consult with the outside SLP who performed the June 2012 evaluation. By the September 18, 2012, the District's SLP spoke with the Parent's outside SLP. [J.Ex. at 18-19].

54. The August/September 2012 ARDC addressed the Student's OT needs by implementing a sensory diet for the Student's sensory needs and agreed to collect data on which sensory strategies were effective with the Student. [J.Ex. 5 at 13 and 17].

55. The August/September 2012 ARDC modified the Student's goals and objectives and added goals for the Student's needs in reading comprehension, keyboarding, and integrated

OT to address handwriting. The ARDC also added accommodations for the Student's cursive writing. [J.Ex. 5 at 7, 12, and 17].

56. At parental request, the August/September 2012 ARDC agreed to conduct a music therapy evaluation and an FBA to address the Parent's concerns about off-task behavior. ARDC participants reported zero occurrences of off-task behavior by the Student under the BIP. [J.Ex. 5 at 17-18; R.Ex. 5; Tr. at 471-472].

57. The Parent believes that the Student has Hyperlexia, a characteristic of reading, where an individual is able to read fairly sophisticated individual words but does not necessarily understand the meaning of the word or passage. Individuals with Hyperlexia possess word recognition/identification skills far above single word and connective text comprehension. [J.Ex. 5 at 19 and J.Ex. 7; R.Ex. 15; Tr. at 134 and 335-336].

58. The Parent believes that Hyperlexia offers the Student "strength in decoding" by giving the Student the opportunity to comprehend language in a way that meets the Student's needs. If Hyperlexia is not addressed, the Parent believes that the Student will not be able to fulfill the opportunity to become the Student's profession of choice. [Tr. at 452].

59. The Parent informed the August/September 2012 ARDC meeting about parental concern that the Student has Hyperlexia. The ARDC considered this concern but ruled out a diagnosis of Hyperlexia based on current evaluation data indicating the Student had average reading fluency and decoding skills. [J.Ex. 5 at 19; Tr. 588-589].

60. The August/September 2012 ARDC responded to the Parent's request for a communication log for communication with the Parent and the Student's private service providers that would include therapy notes. [J.Ex. 5 at 8-9; R.Exs. 4-8; Tr. at 587-588].

61. The Parent requested a Verbal Behavior Assessment ("VBA") at the August/September 2012 ARDC meeting. The ARDC explained that a VBA is used to assess students with little or no language abilities. By contrast, the Student has language communication skills, so the ARDC did not agree to include a VBA. [J.Ex. 5 at 18; Tr. at 276-278 and 477-478].

62. The August/September 2012 ARDC reached consensus at the conclusion of the fourth meeting day. [J.Ex. 5 at 22].

63. The Parent did not agree to an articulation evaluation for the Student at the conclusion of the August/September 2012 ARDC. Participants agreed that no additional evaluation of the Student was necessary at this time. [J.Ex. 5 at 9-10; Tr. at 585-586 and 589-591].

2012-2013 – * Year**

64. The Student received grade-level instruction based on TEKS state standards for *** and attended primarily general education classes. [R.Ex. 25 at 97; Tr. at 577].

65. As the *** year began, *** collected data on the Student's possible IEP regression. After re-teaching the Student's IEPs for six weeks, *** did not find that the Student regressed in any area from the preceding summer. [Tr. at 530].

66. At the start of ***, the Student initiated verbal conversation and used hand raising appropriately in the classroom to obtain permission. The Student appeared more attentive to peer social cues, noting when peers began activities, and more decisive about joining in activities. During lunch, recess, and “special” classes, the Student showed increased interaction with peers and showed a desire to be like the other students. [Tr. at 531].

67. In ***, the Student’s IEP continued reading comprehension goals. Initially, *** used a researched-based “SRA” program with the Student. [Tr. at 535].

October 2012 – IEP Amendment

68. On October 6, 2012, the District members of the ARDC proposed amending the Student’s social skills goal for implementation across all settings and to address parental concerns about the use of social greetings. The Parent refused this IEP amendment. [J.Ex. 6].

October 2012 Music Therapy Assessment

69. The District’s music therapist, ***, completed the music therapy assessment on October 23, 2013. The evaluation included observation of the Student and Music Response Checklists completed by the general education teacher, ***, and the Parent. The music therapist used the Special Education Music Therapy Assessment Process (“SEMTAP”) for a music-based session with the Student for 30 minutes and the Student attempted all requested tasks of the SEMTAP. In the written report, *** concluded that music therapy strategies play an educationally beneficial role in the Student’s development and recommended music therapy as a related service. [J.Ex. 7].

October/November 2012 ARDC Meeting

70. The ARDC convened on October 31, 2012, and November 13, 2012, for review and consideration of the Student’s FBA, completed music therapy evaluation, and additional information on the Student’s response to the sensory diet. The Parent participated on both meeting days and gave input into the decisions. Participants reviewed the updated FBA. Because the Student had only two behavior incidents over a 41-day period that were not considered off-task behavior as the BIP baseline, the ARDC determined that the BIP remained appropriate without revision. [J.Exs. 7 and 8 at 10 and 17; Tr. at 481-483].

71. The October/November 2012 ARDC added AT to the Student’s IEP with tri-lined paper, a word processor, a compact disc program for visual imagery facilitation, and determination of applications (“apps”) to be downloaded to the Student’s iPad device for support of reading comprehension, language building, social skills, and speech. [J.Ex. 8 at 17].

72. The October/November 2012 ARDC added music therapy as a related service for 15 minutes of direct and 15 minutes of consultative services each week with integration into the Student’s first speech goal. [J.Ex. 8 at 16 and 19].

73. The Parent refused the District’s proposed social skills goal amendment during the October/November 2012 ARDC meeting. [J.Ex. 8 at 18].

74. The Parent expressed concern about the Student’s spelling performance to the October/November 2012 ARDC. Participants agreed to collect data on spelling performance

and explained the “Words Their Way” program to the Parent, a spelling program used by the District that teaches children to generalize, rather than memorize, spelling into their writing. The ARDC added spelling support for the Student with the “Project Read” program, a research-based program that uses a multi-sensory approach to reading comprehension. [J.Ex. 8 at 19; Tr. at 534-535 and 543].

75. The Parent also expressed concern about the Student making *** at school. On one occasion, the Student *** in the campus principal’s office when the Parent was present. The Parent reported *** from the Student. [J.Ex. 8 at 19; Tr. at 594-595].

76. District participants determined that the Student was not *** within the school setting and was easily re-directed when necessary. District participants promised to be vigilant to stop any such behavior as it occurs. The ARDC offered to have a behavior specialist go to the Student’s home to help the Parent address this behavior. The Parent declined the additional support. [J.Ex. 8 at 18-19; Tr. at 483-485 and 594-595].

77. The October/November 2012 ARDC reviewed the Student’s current grade averages: Math – ***; Language Arts – ***; Reading – ***; Spelling – ***; Science – ***; and, Social Studies – ***. [J.Ex. 8 at 19].

December 2012 – Speech Evaluation

78. On December 3, 2012, the Parent had the Student evaluated by ***. Because the Student had recently been evaluated, the SLP did not administer any formal testing. The SLP did not conduct an in-school observation. Based upon previous testing, report of the Parent, and a brief observation of the Student of approximately 30 minutes, the SLP prepared the written report and included 11 general recommendations for students with similar learning profiles and diagnoses. Impressions of the SLP state that “it appears that [the Student] presents with a learning style typical of Hyperlexia in the context of an autism disorder and a mixed receptive/expressive language disorder.” [J.Ex. 9].

79. There was no diagnosis of Hyperlexia in the Student’s private December 2012 speech and language evaluation. Diagnosis codes in the private December 2012 speech and language evaluation report state the following: a) 299.0 – Autism; and, b) 315.39 – Developmental Language Disorder. [J.Ex. 9].

December 2012 – IEP Amendment

80. The Parent and District agreed to amend the Student’s IEP by adding a spelling goal on December, 17, 2012. The Student’s pull-out time was increased by 30 minutes to include an intensive teaching approach for spelling rules and decoding patterns. The IEP amendment also added science inclusion support for 60 minutes weekly in the general education classroom to help the Student understand vocabulary, re-teach key information, check for understanding, and focus. [J.Ex. 10].

81. The Parent believes that the District has unfairly hampered parental ability to communicate with the District by limiting the Parent’s electronic mail (“e-mail”) access to District staff. [Tr. at 453].

82. Petitioner presented multiple pages of e-mail communication by Parent, District staff on the Student’s campus, LISD administration and board members, and other service

providers of the Student from 2011 forward. The majority of the e-mails are communications between the Parent and District staff on the Student's campus. [P.Ex. 8].

83. By the end of the fall 2012 semester, the tone and content of the Parent's e-mail communications grew increasingly negative and accusatory, frequently including negative comments about specific campus staff by name and deprecating District efforts to educate the Student. On December 21, 2012, the campus principal, ***, replied to the Parent's recent e-mail from the preceding day and directed that all future e-mail from the Parent be sent only through the principal. *** added, "I request that questions be at the beginning of your email. If you begin to belittle, verbally humiliate or demean LISD or my staff, I will stop reading the e-mail and you will not receive a written reply from me." [P.Ex. 8 at 375 and 377; Tr. at 455-456].

84. On December 21, 2012, the Parent sent an e-mail in reply to the campus principal listing 44 numbered questions, many of which were multiple questions, and a second e-mail with eight additional questions for the principal's response. *** initially responded to the questions on December 29, 2012, and gathered additional information from other staff after returning from the winter break in January 2013. On January 7, 2013, *** sent a detailed response to the Parent's questions. [R.Ex. 30 at 1-5; P.Ex. 8 at 378-401].

January 2013 ARDC Meeting

85. On or about January 7, 2013, the Parent gave written notice to the District of intent to place the Student into a private school at District expense after January 22, 2013. [J.Ex 11 at 9].

86. On January 15 and 28, 2013, the ARDC convened for a brief ARDC meeting to consider Petitioner's request for private school placement at District expense and to consider the December 2012 private speech evaluation obtained by the Parent. The Parent attended and participated in both meeting days. [J.Exs. 9 and 11; Tr. at 597-598].

87. The January 2013 ARDC reviewed the Student's current progress in general education classes that included passing grades in all subjects: Math – ***, English/Language Arts – ***, Reading – ***, Spelling – ***, Science – ***, and Social Studies – ***. The Student had difficulty staying on task with individual work but stayed on task with group work and peer work and responded to verbal redirection. [J.Ex. 11 at 4].

88. The Parent believes the Student's handwriting would be at "almost 100 percent" at the beginning of each school year, but by the third week of each school year, the Student's handwriting would deteriorate to 70 %. By January each year, the Parent believed handwriting would further deteriorate to 38%. [Tr. at 442].

89. As of the January 2013 ARDC meeting, the Student had achieved early mastery of current BIP goal, an OT integrated speech goal, and counseling goals and made good progress on the remainder of the current IEP goals. The mastered integrated OT/speech goal was a handwriting goal of producing written work with 70% accuracy in the classroom setting with adapted paper and visual cue. The Student mastered this goal at 80%. [J.Exs. 5 at 12, 11 at 4, and 13 at 1-7].

90. The Parent expressed concern that other behaviors were noted in the Antecedent, Behavior, and Consequence (“ABC”) paperwork from December 2012 and January 2013, believed by the Parent to be due to a lack of implementation of sensory integration accommodations. The ARDC requested an additional FBA to address the Parent’s concern about the Student’s attention to task. [J.Ex. 11 at 4-9; Tr. at 303-309 and 485].

91. The additional FBA was scheduled for completion “no later than six weeks,” but the January 2013 ARDC did not set a date to convene to develop the Student’s BIP after completion of the additional FBA. The meeting ended in consensus and the Parent signed the ARDC meeting documentation. [J.Ex. 11 at 4-6 and 16-17].

92. Subsequent to the January 2013 ARDC meeting days, the Parent provided a parent statement for both meeting days that was included in the ARDC meeting documents. [J.Ex. 11 at 7-13].

93. The January 2013 ARDC reviewed the Student’s private December 2012 speech and language evaluation. At hearing, the Parent admitted that the District considered this information. [J.Exs. 9 and 11; Tr. at 595-596].

94. The January 2013 ARDC reviewed the information from the Student’s private service providers, including information gathered from *** at *** once the Parent signed consent for the contact on January 12, 2013. [J.Ex.11 at 4; R.Ex. 29 at 1; Tr. at 306-307 and 595-597].

95. The ARDC determined that many of the recommendations of the private December 2012 evaluation were already incorporated into the Student’s IEP. [J.Ex. 11 at 6; Tr. at 307 and 595-597].

February 2013 -- Behavioral Concerns and Assessment

96. The Parent became very concerned in February 2013 that the Student was *** and was having a significant amount of meltdown and other sorts of behaviors. In the Parent’s experience, this change indicated that the Student was “shutting down” and the Parent wanted the changed behavior addressed quickly. [Tr. at 433 and 450-451].

97. The additional FBA was completed on February 24, 2014, within the six-week deadline set at the January 2013 ARDC. [J.Ex. 12 at 1-4].

98. Two LISD behavior interventionists conducted the February 2013 FBA, one of whom is a Board Certified Behavior Analyst (“BCBA”). The evaluators reviewed input from the Student, directly observed the Student individually and with a non-disabled peer for a comparison. The FBA included administration of the Functional Analysis Screening Tool (“FAST”), a screening tool used to uncover the function of behavior. The FAST includes a series of questions conducted in interview format by the evaluator with a variety of individuals, including the Parent, teachers, and school service providers. The interventionists also reviewed ABC data from August 2012 through February 2013, and reviewed existing data. [J.Ex. 12 at 1-4; R.Exs. 9 at 1-2, 10 at 1-2, 11 at 1-5, 12 at 1-24, and 13 at 1-8; Tr. at 485-503].

99. Based on the data collected, the February 2013 FBA report determined that the Student exhibited the following behaviors and frequency of occurrence over the previous six

months: a) physical aggression – 3 times; b) maladaptive “verbals” (verbal statements) – 4 times; and, c) noncompliant episodes – 3 times. Based on an average of 11 fifteen-minute recordings, the Student exhibited off-task behavior at 14%. When the Student was compared with a non-disabled peer over four fifteen-minute interval recordings, the peer scored higher at off-task behavior at 27% while the Student scored at only 6%. [J.Ex. 12 at 1-4].

100. The FBA report recommended addressing the Student’s physical aggression and maladaptive verbal behavior through a BIP, but did not suggest use of the BIP for the off-task or non-compliant behaviors because these behaviors did not impede the Student’s learning or the learning of others. [J.Ex. 12 at 1-4 and J.Ex. 14; Tr. at 501-505].

101. After the February 2013 timely completion of the FBA, the evaluators prepared two addenda to the report. On March 2, 2013, the Addendum to Facilitate Implementation of BIP addressed additional positive behavioral intervention strategies as support for the Student’s BIP. On March 27, 2013, the second addendum gathered additional evaluation from LISD staff to address whether the Student presented with off-task behavior and to address any new concerns after the February 2013 FBA. The additional evaluation confirmed that the Student did not present with off-task behavior. [J.Ex. 12 at 5-9; R.Ex. 10 at 3-11; Tr. at 506-514].

102. The decision to amend the Student’s FBA is consistent with best practices when evaluating behavior, corroborated by the hearing testimony of the Executive Director of the ***. [Tr. at 158].

103. On February 28, 2013, the campus principal, ***, and the Parent exchanged numerous e-mail messages regarding new IEP drafts. *** invited the Parent to review IEP drafts on March 8, 2013, to give input into the drafts prior to the next ARDC meeting. During the exchange, the Parent asked about the speech, counseling, and OT goals. [P.Ex. 8 at 504-509; Tr. at 326-327].

104. Once the FBA and addenda were almost complete, the District made efforts to find a workable date for the ARDC meeting that would now serve the dual purpose of an annual ARDC and review of the completed FBA with addenda. The District asked the Parent for a list of date conflicts. [R.Ex. 29].

March 2013

105. On March 1, 2013, *** responded to the Parent’s e-mail that the SLP, counselor, and occupational therapist would address the speech, counseling and OT goals and the Parent responded asking why the goals needed to be changed. In reply on March 2, 2013, *** informed the Parent that the ARDC would be combining the FBA information with the Student’s annual ARDC meeting. [P.Ex. 8 at 510 and 512; Tr. at 327].

106. On March 4, 2013, the Executive Director of Special Education, ***, e-mailed the Parent the planned ARDC meeting would be the Student’s annual ARDC meeting and that the ARDC would be able to come back in August or September to review the Student’s progress at the end of the summer. [P.Ex. 8 at 513; Tr. at 528].

107. The ARDC initially planned – but subsequently cancelled – an ARDC meeting for March 19, 2013. No ARDC meeting took place for the Student on March 19, 2013. [Tr. at 309-310, 313-314, and 325-328].

108. The Parent unilaterally withdrew the Student from LISD and enrolled the Student at ***. [J.Exs 14 at 36 and 15 at 2; P.Ex. 8 at 534; R.Ex. 25 at 12].

109. The Student earned A's and B's for the *** year until the time of withdrawal in *** 2013 and made good progress on IEP goals and objectives, mastering many goals as of ***, 2013, based on the District's IEP goal progress report. [J.Ex. 5 at 12 and J.Ex. 13; R.Ex. 25 at 97].

110. By the time the Student withdrew from LISD in *** 2013, the Student had demonstrated grade-level achievement in all subject areas during *** at LISD. [R.Ex. 25 at 97; Tr. at 533-536, and 544-545].

111. The Student made gains with the Project Read and the Student's reading comprehension accommodations during ***. At the time the Student withdrew from LISD in *** 2013, the Student performed at grade level in reading comprehension. [Tr. at 536].

112. During ***, the Student was on grade level in math with strengths in calculations. Although the Student showed deficits in reading comprehension that impacted understanding math word problems, the Student responded well to math accommodations such as supplemental aids, charts, coins, and manipulatives. At the time of the Student's *** 2013 withdrawal from LISD, *** believed that the Student was on target with the TEKS state standards for *** math. [Tr. at 533].

Private Placement – ***

113. *** is a small private school in ***, Texas, serving *** students ranging in age from kindergarten through the twelfth grade. All enrolled students at *** are disabled. [Tr. at 177].

114. The Student does not have non-disabled Students to model at ***. Currently, the Student is one of *** students in a classroom with students ranging in age from *** to *** at varying grade levels. [Tr. at 177].

115. The Executive Director of ***, ***, has an extensive background in education as a university professor and educator with certifications in Texas for special education and mid-level management. *** served as Lead Behavior Specialist for *** ISD and in varying capacities in Texas and *** public schools including behavior management/crisis prevention specialist, master teacher, assistant special education supervisor, curriculum specialist, and teacher. *** is a founder and co-owner of ***. [P.Ex. 23 at 1-6].

116. *** testified at hearing. According to ***, the Parent pays the tuition at *** on a monthly basis and cancelled checks are used as proof of the payments. [Tr. at 189; P.Exs. 14 at 28 and 23 at 11].

117. The *** assessed the Student with the Brigance Inventory of Basic Skills (“Brigance”) instrument in the fall of 2013. On the Brigance, the Student functioned primarily on the *** level. [P.Ex. 23 at 27-28; Tr. at 112 and 187].

118. *** also tested the Student with the Brigance in the spring of 2013, but did not supply a copy of this testing in response to Respondent’s subpoena prior to the due process hearing.³ [R.Ex. 31; Tr. at 187].

119. The Student’s Spring 2013 program at *** included three goals with associated objectives to address increasing reading and language arts, increasing math computation and application of facts, and, appropriately functioning in the school environment. Evaluation methods used include four of five observed opportunities over a twelve-week period. [P.Ex. 23 at 9-10].

120. The District communicated with the Student’s private evaluators and providers when considering existing evaluation data, conducting additional evaluation, and coordinating services. [J.Ex. 2 at 46 and J.Ex. 5 at 38-40; P.Ex. 8 at 418, 422-424, 432, 450, 457, 460, 467-470, 473, 488-489, 497-498; R.Ex. 29 at 1].

121. Petitioner presented hearing and testimony documentary evidence about out-of-pocket therapy and tuition expenses paid for *** therapy, outside therapies not covered by insurance, mileage amounts, and *** tuition paid. [P.Ex. 14 at 1-2; Tr. at 436-439].

April 29, 2013 ARDC Meeting

122. The annual ARDC meeting for the Student convened on April 29, 2013. The Parent attended and actively participated in this meeting. Participants developed the Student’s IEP for the 2013-2014 school year using current evaluation data, PLAFFPS, and input of the Parent. [J.Ex. 14 at 36; Tr. at 303-309 and 325-328].

123. The April 2013 ARDC reviewed the Student’s progress during *** through the time of the Student’s withdrawal on ***, 2013. The IEP goals and objectives addressed all areas of the Student’s academic and functional needs, including: a) handwriting deficits with handwriting and typing skills; b) related service needs for OT, counseling, music therapy, AT, and speech; c) accommodations for seating, instruction, materials adaptation, testing, grading, and behavior; d) a sensory diet to be implemented throughout the school day; e) placement in general education classes as the least restrictive setting with inclusion support, pull-out instruction in the resource room for reading and writing special education instruction; f) two weeks of social skills/self-regulation training; and, g) pull-out speech therapy. The Parent refused an offer of in-home and parent training. [J.Exs. 5 at 12, 13 at 1-7, and 14 at 3-36].

124. The April 2013 ARDC reviewed the FBA and proposed BIP to address physical aggression (***, ***, ***) and maladaptive verbals (arguing and crying). Positive intervention strategies included stating clear instructions, visual display of expectations, keeping the Student actively engaged, use of “first/then” strategy, teaching self-control strategies, increase

³ At hearing, Respondent identified numerous documents not produced pursuant to a subpoena previously served on ***. [Tr. at 221 and 609]. The list of missing documents appears in the record as Respondent’s Ex. 31. After receipt of the additional documents on March 7, 2014, Respondent did not offer any of the late-produced exhibits and they are not a part of the record of this dispute. [Pleading file; Order No. 12].

supervision when lining up, access/attention protocol, specific verbal praise, increased positive reinforcement, a point sheet, response cost, gain/loss of privileges, and non-nutritious snacks. [J.Ex. 14 at 17].

125. The Parent disagreed with the District's approach to the Student's behavior at the April 2013 ARDC. The Parent believes that aversion will not work with the Student. Instead, the Parent believes the Student must be taught and positive reinforcement is "the key" for the Student. For example, the Student misunderstood that a "minus zero" means that the Student had no errors. [J.Ex. 14 at 36].

126. The Parent disagreed with the proposed 2013-2014 reduced handwriting task for the Student's IEP. [J.Ex. 14 at 36].

127. The April 2013 ARDC proposed the following schedule of services for the Student's 2013-2014 school year per week: English/Language Arts – 200 minutes inclusion and 180 minutes special education; Math – 75 minutes inclusion; Social Studies – 60 minutes inclusion; Science – 60 minutes inclusion; Speech – 30 minutes direct service twice a week; OT – 30 minutes direct service once a week; Counseling – 20 minutes direct service bi-weekly (every other week); Music Therapy – 15 minutes direct service and 15 minutes consult service per week. [J.Ex. 14 at 36].

128. The Parent signed in disagreement at the end of the April 2013 ARDC meeting. The Parent expressed opinion that the Student's private placement serviced the Student's needs. The Parent declined a 10-day opportunity to reconvene the meeting. The District provided Prior Written Notice to the Parent of the April 2013 ARDC's decisions and the meeting ended. [J.Ex. 14 at 36-40].

129. The Parent did not present any evidence to the Student's April 2013 ARDC regarding the Student's progress or successful strategies used with the Student at *** to the April 2013 ARDC. [J.Ex. 14 at 1-43].

130. ***, an LISD diagnostician who participated in the Student's May 2012 FIE, believes that the Student's ability to be around peers while attending the District has positively impacted the Student's behavior. [J.Ex. 1; Tr. at 537].

March - May 2013 – Records Request

131. The Parent requested the Student's records on March 19, 2013, by e-mail, "I request a COMPLETE COPY of the permanent record for [the Student] for all the school years attended at LISD *** campus, including 2009-2010, 2010-2011, 2011-2012 and the current year 2012-2013.... Please inform me of the number of pages and cost to the family."⁴ On the same day, the Assistant to the Executive Director for Special Education, ***, responded to the Parent's request by explaining the process and began of compiling the records and getting clarification from the Parent. [P.Ex. 8 at 530-532; R.Ex. 19 at 1-4].

132. *** sent multiple e-mail updates on the compilation process to the Parent regarding the increasing volume of documents gathered and the projected cost between March 22 and April 16, 2013. On April 16, 2013, *** e-mailed the Parent that the records had been

⁴ Emphasis in the original.

gathered and were ready for the Parent's inspection. When *** asked the Parent for several dates and times that would be convenient for the Parent to come inspect the records, the Parent did not come to review the records on the specified dates. [P.Ex. 8 at 549-550; R.Ex. 19 at 12-13; Tr. at 310-311].

133. On May 11, 2013, the Parent sent *** an e-mail expressing desire to review the over 4,000 pages of collected records. Subsequently over four visits, the Parent inspected and identified records to be copied for the Parent, and received the copies. [P.Ex. 8 at 553-571; R.Ex. 19 at 14-37].

134. The Student's current 2013-2014 *** goals address academics including reading, spelling at the *** level, sentence/paragraph composition with correct spelling and punctuation, and math computational problems at the *** level. Evaluation methods include "four of five observed opportunities over a twelve-week period." [P.Ex. 23 at 7-8; R.Ex. 25 at 163-165].

135. The documentary evidence from *** indicates that the Student regressed in academics and behavior while attending ***. During the 2013-2014 school year as a *** student, the Student's grades have dropped from A's and B's to satisfactory and less than satisfactory scores in the 70% range of mastery. In some subjects, the Student repeated previously-mastered *** level work. [P.Ex. 23 at 7-10 and 12; R.Ex. 25 at 163-165].

136. ***, Executive Director of ***, confirmed at hearing that the Student now functions at a *** performance level in the ***. [R.Ex. 25 at 163; Tr. at 195-197].

137. The *** records for the Student indicate a rise in aggressive behavioral issues at *** from the manageable level of an occasional incident at LISD to daily or weekly incidents including ***, ***, ***, use of unkind words and making fun of others, ***, and exhibiting bullying behavior. [R.Ex. 25 at pages 11-89, 97, 161, 163-164, 166-311; Tr. at 217].

138. The Parent did not accept any offer of parent training or in-home training by the District. [Tr. at 577].

139. Petitioner did not present evidence that the District failed to train or supervise staff working with the Student.

140. The Parent received notice of and fully participated in all of the Student's ARDC meetings and ARDC amendments during the pertinent period. [J.Exs. 2, 5, 8, 10, 11, and 14; Tr. at 303 and 325].

Discussion

This dispute concerns a Student qualified for special education and services due to Au and SI who attended LISD from 2009 until *** 2013 when the Parent unilaterally withdrew and placed the Student into a private school. It is undisputed that the Student received a special education program and related services at all times during the Student's enrollment in the District. Instead, the Parent challenges the components and substance of this special education program deficient, giving the Parent no option but to withdraw and place the Student into private school and subsequently seek private school tuition reimbursement and prospective

private school placement. Because the Parent believes that any educational progress made by the Student while enrolled at LISD is in large measure due to private therapies provided by the Parent, rather than efforts by the District. Petitioner seeks reimbursement of those costs and out-of-pocket expenses. By contrast, Respondent denies that the Student requires private placement in order to access an appropriate education and believes that the District properly provided a FAPE to the Student at all times.

Appropriateness of the District's Educational Program

Under the IDEA and its implementing regulations, school districts must provide a disabled student with an appropriate IEP that meets the student's needs and must also provide a FAPE. 34 C.F.R. §§300.17 and 300.320(a). Related services are transportation and such developmental, corrective, and other supportive services as are required to assist eligible students to benefit from their special education. 34 C.F.R. §300.34(a). Eligible students must receive needed supplementary aids and services, and other supports to allow students with disabilities to be educated with nondisabled students to the maximum extent appropriate. 34 C.F.R. §300.42. A student with a disability must have nonacademic and extracurricular services and activities, such as meals and recess periods, with nondisabled students to the maximum extent possible according to the needs of the eligible student. 34 C.F.R. §300.117.

Parents who remove their child from the public school without the school district's consent, do so at their own financial risk; parents are entitled to reimbursement only if they can prove *both* of the following: 1) the public placement violated the IDEA, and, 2) the private placement was proper under IDEA. *Town of Burlington v. Dep't of Edu.*, 471 U.S. 359. 369-370, 105 S.Ct. 1996, 202-203 (1985).

A determination of whether or not the District provided an appropriate education to the Student is generally defined as an education that enables a student to obtain "some benefit" from the educational program. *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 189 (1982). The Fifth Circuit established a test in *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253 (5th Cir. 1997) to examine whether "some benefit" is demonstrated by consideration of the following:

- (1) The program is individualized on the basis of the student's assessment and performance;
- (2) The program is administered in the LRE;
- (3) The services are provided in a coordinated and collaborative manner by the key stakeholders; and,
- (4) Positive academic and non-academic benefits are demonstrated.

I. Individualized Program. The record before me conclusively established that the Student's ARDC met for numerous multiple-day ARDC meetings with the Parent to work collaboratively in a coordinated manner to develop, revise, and review the Student's IEP based on current assessment and performance data. This data included the May 2012 FIE, many FBAs, use of updated performance level data (the PLAAPS), and consideration of information from the Student's private providers. This process included the Parent at all junctures and included private service provider data and input for multi-day ARDC meetings for review and development of measureable goals and objectives, review of additional assessment data, the Student's accommodation needs, and related service needs to address the Student's unique academic and non-academic needs.

Behavior and ABA Therapy. The Student's May 2012 FIE addressed all areas of suspected disability including the area of behavior. In May 2012, the Student's school behaviors included verbal outbursts and yelling or crying. Both the FIE and FBA failed to establish a need for the Student to have ABA therapy and Petitioner presented no evidence to establish that the Student required ABA therapy to benefit from the Student's instruction. I conclude that Petitioner did not sustain the burden to prove the Student required ABA therapy and did not meet the burden to establish a right to reimbursement for ABA therapy services provided by the Parent.

Handwriting, Speech, and Articulation Needs. In the May 2012 three-day ARDC meeting, the ARDC developed the Student's 2012-2013 IEP in all areas of need including handwriting, speech, and articulation needs. The Student remained in the general education classroom with inclusion support and pull-out services for speech therapy. Handwriting skills were addressed by developing the Student's typing and handwriting skills, and the Student received OT services and special education counseling. When the Parent asked for independent evaluation in the areas of speech and OT, the ARDC agreed to provide the IEEs at school district expense.

After completion of the OT and speech IIEES, the ARDC met over a four-day period in August and September for review of completed OT and speech IIEEs, and added a sensory diet to address sensory needs based on the new IEE data and input of participants. The ARDC also added additional goals and cursive writing accommodations and deleted previous articulation goals because the Student did not present an articulation need within the school setting. When the District ARDC participants requested permission for an articulation evaluation, the Parent refused consent.

Fall 2012 FBA and VBA Request The Parent raised concern at the August/September 2012 ARDC meeting that the Student's needs were not being met due to Hyperlexia. At that time, the ARDC considered this information but concluded that the Student did not present with Hyperlexia as the Student showed average performance in both reading fluency and decoding skills. Because the Student exhibited language skills, the ARDC considered but declined the Parent's request for a verbal assessment of the Student's behavior through a VBA. Instead, the ARDC undertook more evaluation of the Student in response to parental request – a music therapy evaluation and an FBA to address off-task behavior.

The ARDC convened for a two-day period for the October/November 2012 ARDC meeting, reviewing the completed music therapy and the FBA evaluations. The ARDC revised the sensory diet, added music therapy as a related service, added AT supports of a word process and tri-lined paper. The current FBA showed only two behavioral incidents took place in a more than 40-day period in the school setting, both of which were not considered off-task behavior. Based on this information, the ARDC determined that the Student's BIP was appropriate. The Parent expressed concern about *** the Student during this ARDC. Because District participants did not observe this behavior in the school setting, the ARDC offered to have the behavioral specialist visit the Parent in the Student's home, but the Parent refused the services.

Academic Supports and Goal Revisions At the October/November 2012 ARDC meeting, the Parent expressed concern about the Student's spelling. In response, the ARDC reviewed the Student's grades, including a *** in spelling, and offered additional spelling

support for the Student using the “Project Read” program. When the ARDC met for a one-day brief ARDC meeting in December 2012, the ARDC added 30 minutes of additional pull-out time to teach the Student an intensive approach for spelling rules and decoding patterns, added a new spelling goal, and added science inclusion support time.

Petitioner’s Private Speech and Language Evaluation In January 2013, the ARDC convened for a two-day brief ARDC meeting to consider the Parent’s request for private school placement at District expense and for review of newly-provided December 2012 private speech and language evaluation from the Parent. At the time of this meeting, the Student had passing grades in all subjects, had early goal mastery of a BIP goal, an OT/speech integrated writing goal, and counseling goals and the ARDC drafted new goals for OT handwriting.

The ARDC reviewed and considered the private evaluation’s conclusion that the Student exhibits a learning style typical of Hyperlexia, noted the lack of a Hyperlexia diagnosis in the report, and determined that the Student’s IEP already addressed many of the report recommendations. The Parent raised additional concerns about the District’s ABC documentation and sensory goal implementation over the preceding two months. The ARDC offered an additional FBA to address both the private evaluation and the parental concerns. Although the Parent complains that the FBA was not *reviewed* within six weeks, the ARDC documents of this meeting clearly establish that, in fact, no date was set for review of the completed FBA at the time this meeting concluded. The ARDC agreed to *complete* the FBA within six weeks. Petitioner did not meet the burden to show otherwise.

February 2013 FBA and ARDC Meeting Plans The documentary evidence established the timely completion of the FBA within six weeks of the January 2013 ARDC on February 24, 2013. The District made initial plans to hold an ARDC meeting on March 19, 2013, but changed those plans. Although the Parent complains that no notice was given to the Parent about the meeting or about the cancellation of the meeting, there was, in fact, no ARDC meeting for the Student in March 2013. I conclude that no procedural violation occurred.

The documentary evidence and testimony establishes that the Parent raised additional concerns about the Student’s behaviors of meltdowns and *** while the new FBA was underway. Because of the new behavioral concerns, the FBA evaluators prepared and completed the first addendum to the FBA report addressing implementation of the Student’s BIP by March 2, 2013. When additional questions arose about possible off-task behaviors since February 2013, evaluators prepared a second addendum report by March 27, 2014. Once the FBA and addenda were almost complete on March 26, 2013, the District began efforts to find a workable date for the ARDC meeting that would now serve the dual purpose of an annual ARDC and review of the completed FBA with addenda, asking the Parent for the Parent’s date conflicts.

April 2013 – Completed FBA Review and Annual ARDC Meeting The testimony and documentary evidence further show that the ARDC convened on April 29, 2013, a date not listed in the Parent’s date conflicts, and within 32 days of the completion of the last addendum to the FBA on March 27, 2013. Contrary to the Parent’s assertions, the evidence establishes that Parent received communications about the dual purpose of this ARDC meeting for review of the completed FBA and addenda data as well as to serve as the Student’s annual ARDC meeting. The Parent attended and participated in the meeting.

The evidence establishes no undue delay or procedural error in accommodating the Parent's schedule with the April 2013 ARDC meeting date and Petitioner presented no evidence to show that the additional evaluation addenda were detrimental or harmed the Student by delaying review of the FBA as completed on February 24, 2013. Instead, the gathering of needed information and preparing two addenda is in line with the hearing testimony of the Executive Director of *** affirming this choice, "I can tell you that, from my training, you need to continue assess whether it's academics of behavior until you feel comfortable that you have adequately collected enough data to support what you're looking for." [Tr. at 158].

The April 2013 ARDC participants reviewed the Student's progress, performance, current assessment data, and developed the Student's IEP for the 2013-2014 school year with placement in the general education classroom with inclusion support with pull-out instruction in the resource room for reading and writing, two weeks of social skills/self-regulation training, AT, music therapy, speech therapy, and OT services. Next, the ARDC reviewed the FBA with completed addenda. Two LISD behavior interventionists, one of whom was a BCBA, prepared the FBA using a wide variety of sources including the Student, the Parent, and observation of the Student as well as observation of the Student compared with a non-disabled peer, existing evaluation data and ABC data collected from August 2012 through February 22, 2013.

The completed FBA recommended a BIP to address the Student's maladaptive verbal expression and physical aggression. The FBA reported that the Student's behavior was not off-task or non-compliant, did not impede the Student's learning, and did not impede the learning of others. As a result, the interventionists recommend no modification of the Student's BIP for off-task or non-compliant behaviors. The ARDC reviewed the FBA results and proposed a BIP to address physical aggression, such as ***, ***, ***, and maladaptive verbal expression, such as arguing and crying. Although the Parent complains that the strategies used aversion in this BIP, the ARDC documents of the meeting show the BIP included positive intervention strategies.

Based on the above, I conclude that the program and services developed through the ARDC included extensive assessment using appropriate instruments and data to develop the Student's program that was based on the Student's unique needs and progress along with the input of the Parent, service providers, teachers, and evaluators to adjust the program. The hearing testimony highlighted the efforts of the Student's educators to revise the Student's program as needed based on new assessment and performance data.

II. Restrictiveness of the Program (LRE). A school district must educate qualified special education students with other students who are nondisabled to the maximum extent appropriate. *Id.* At all times under the District's educational program, the Student remained in the general education classroom with inclusion support. As discussed above, inclusion support was increased to address concerns as they arose, such as the added spelling supports in October through December 2012. With these supports, the Student remained in the general education environment and had access to non-disabled peers for modeling needed social skills. The record before me shows this program was successful with the Student.

By contrast, the Student's private placement consists of a small number of students, all of whom have disabling conditions. There are no opportunities for peer modeling and no access to

the services available to the Student such as counseling, speech, and OT. The private placement is more restrictive than the Student's placement in the District since the Student's withdrawal in *** 2013. The Student has not accessed the District's proposed 2013-2014 program since the Student's withdrawal from LISD.

III. Coordination and Collaboration. Review of the testimony and documentary evidence in this dispute equivocally shows that the Parent has been a full participant at all times in the education of the Student within LISD for development and revision of educational program and for input into and information from assessment gathering and review. Although the Parent complains that the District hampered communication and access to information, the documentary evidence reveals that the Parent had unfettered ability to communicate with the Student's educators. Even when the Parent's communications reflected increased irritation with individuals and the educational program, the District's educators ensured that the Parent still had a channel of communication through the campus principal using appropriate boundaries to work in a collaborative manner.

IV. Positive Academic and Non-academic Benefits. The Student's progress under the District's program shows academic gains with grades and standardized testing instruments and made good progress on all academic and non-academic goals and objectives and achieved mastery of many of the goals prior to the time of the annual review of the Student's program. The Student had grade-level achievement at the time of withdrawal from the District, academic gains corroborated by the Brigance test administered by the *** in the fall of 2013. On that testing, the Student functioned primarily on the *** level. By contrast, the Executive Director of *** testified that the Student now functions at primarily a *** level. [Tr. at 112 and 183]. I conclude that the Student received academic and non-academic gains under the District's program.

At the due process hearing, the Parent stated that "everything about my children is not what they need to have, but what they need to become." [Tr. at 451-452]. The Parent appears to believe that the District should be able to remediate the Student's disabling condition of Au to the degree that the Student no longer exhibits behaviors in line with the diagnosis. This assertion is contrary to the recent Fifth Circuit decision in *Klein v. Hovem*, 690 F.3d 390, 59 IDELR 121 (5th Cir. 2012). The Court reviewed the *Rowley* standard concerning educational benefit, noting:

(O)verall educational benefit, not solely remediation, is IDEA's statutory goal. [The Student's] IEPs were sufficient because they were 'reasonably calculated to enable [the Student] to achieve passing marks and advance from grade to grade' in mainstream classes. *Rowley*, 458 U.S. at 204, 102 S.Ct. at 3049. Moreover, an IEP is not required to maximize a child's potential, but to provide 'a basic floor of opportunity.' See *Houston Indep. Sch. Distr. v. Bobby R.*, 200 F.3d 341, 346 (5th Cir. 2000) (*paraphrasing Rowley*).
690 F.3d 390 at 398; 59 IDELR 121 at 7.

In this case, the Parent seeks to remediate the Student's disability by having the Parent's desired alternative methodologies instead of the Student's successful educational program. See *D.B. v. Houston Indep. Sch. Distr.* (S.D. Tex. 2007), 48 IDELR 246.

Conclusion

On the dispute before me, the District provided an educational program that successfully addressed the Student's academic and behavioral deficits within a predominately general education program so that the Student performed academically on grade level and evidenced behavioral progress. I conclude that *Rowley* and the IDEA require nothing further. Petitioner did not meet the burden to show the inappropriateness of the District's educational program, and services. Because the District's program provided a FAPE to the Student, the Student is not entitled to private placement reimbursement at public expense. Accordingly, I decline to award any relief to Petitioner.

Conclusions of Law

1. Respondent is the local educational agency responsible for determining the Student's eligibility for special education and related services under the IDEA. 20 U.S.C. §1400, *et. seq.*, and its implementing regulations.
2. Petitioner, as the party who challenged the school district's eligibility determination or offer of services under the IDEA, bears the burden to prove that the Student has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd on other grounds sub nom., Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 S.Ct. 528 (2005).
3. Petitioner did not meet the burden to prove denial of a FAPE in this dispute under Respondent's program. 34 C.F.R. §§300.17, 300.34(a), 300.42, 300.101, 300.117, 300.320(a), and, 300.513(a); *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
4. Respondent provided a FAPE to Petitioner at all times pertinent to this dispute. 34 C.F.R. §§300.17, 300.101, and 300.513(a); *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
5. Petitioner did not meet the burden to show an entitlement to, or reimbursement for, tuition at ***. 34 C.F.R. §300.148; *Town of Burlington v. Dep't of Edu.*, 471 U.S. 359. 369-370, 105 S.Ct. 1996, 202-203 (1985).
6. Petitioner did not meet the burden to prove procedural errors occurred that impeded Petitioner's right to a FAPE, significantly impaired the Parent's opportunity to participate in the ARDC process, or caused a deprivation of educational benefits. 34 C.F.R. §§300.324(a)(5) and 300.513(a)(2); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003).⁵

⁵ In Texas, the Individualized Education Program Team is referred to as the Admission, Review, and Dismissal Committee ("ARDC").

7. Respondent timely completed Petitioner's FBA and BIP in January 2013 through April 2013. Petitioner did not meet the burden to prove otherwise. 34 C.F.R. §300.303, 300.304, 300.305(a-d) and 300.324(a)(2).
8. Respondent included the Parent as a full participant in the ARDC process at all times in this dispute. Petitioner did not meet the burden to prove otherwise. 34 C.F.R. §§300.305(a)(1)(ii), 300.320(a)(3)(iii), 300.321(a)(1), 300.322, 300.324(a)(1-2), 300.501(b), and 300.502(b).
9. Respondent provided accurate information and updates about Petitioner's behavioral and academic progress at all times pertinent to this dispute. Petitioner did not meet the burden to prove otherwise. 34 C.F.R. §§300.320(a)(3)(ii) and 300.324(b).
10. Respondent provided access to Petitioner's records and provided copies in accordance with records procedures at all times pertinent to this dispute. Petitioner did not meet the burden to prove otherwise. 34 C.F.R. §§300.613, 300.616, and 300.617.
11. Respondent provided an educational program for Petitioner in the LRE that resulted in educational progress on, rather than regression on, mastery of behavioral and academic goals. 34 C.F.R. §§300.114(a)(2), 300.116, 300.320(a)(3-4), and 300.324(b)(i-ii).
12. Respondent provided appropriate goals for Petitioner to address speech/articulation and handwriting that enabled Petitioner to progress rather than regress under Respondent's program. Petitioner failed to prove otherwise. §§300.320(a)(3-4), and 300.324(b)(i-ii).
13. Respondent provided necessary AT and related services to address Petitioner's academic and functional needs at all times pertinent to this dispute. 34 C.F.R. §§300.34, 300.105, and 300.107.
14. Petitioner did not meet the burden to prove an entitlement to, or reimbursement for, any outside evaluation, service, mileage, or out-of-pocket expense incurred during the pertinent period. 34 C.F.R. §§300.34, 300.148 and 300.513(a).
15. Petitioner did not meet the burden to prove an entitlement to ESY services at any time pertinent to this dispute. As such, Petitioner is not entitled to reimbursement for summer programming expenses. 34 C.F.R. §300.306.
16. Petitioner did not meet the burden to prove Petitioner was entitled to a VBA evaluation. 34 C.F.R. §§300.15 and, 300.304(b), and 305(c).
17. Petitioner did not meet the burden to show Respondent improperly trained and supervised Respondent's staff working with Petitioner regarding positive behavior reinforcement and to address off-task behavior. 34 C.F.R. §300.156 (a)-(c); TEX. ADMIN. CODE §89.1131.

ORDERS

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the relief requested by Petitioner is **DENIED**.

IT IS FURTHER ORDERED that any and all additional or different relief not specifically ordered herein is **DENIED**.

Signed this 10th day of April 2014.

/s/Mary Carolyn Carmichael

Mary Carolyn Carmichael
Special Education Hearing Officer

NOTICE TO THE PARTIES

This decision is final and immediately enforceable, except that any party aggrieved by the findings and decision may bring a civil action in any state court of competent jurisdiction or in a district court of the United States as provided in 20 U.S.C. §1415(i)(2); 34 C.F.R. §300.516; and 19 TEX. ADMIN. CODE §89.1185(o).

**STUDENT, b/n/f/ PARENT,
Petitioner**

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v.

DOCKET NO. 039-SE-1013

**LEWISVILLE INDEPENDENT
SCHOOL DISTRICT,
Respondent**

SYNOPSIS OF DECISION

1. Whether Respondent timely completed and implemented the Student’s functional behavioral assessment and behavioral intervention plan (“BIP”) documented in the Admission, Review, and Dismissal Committee (“ARDC”) meeting on January 15, 2013?

HELD: **For the District**
34 C.F.R. §§300.15 and, 300.304(b), and 305(c).

2. Whether Respondent included the Parent as a full participant in the Student’s ARDC process, including consideration of parental input at the Student’s January 2013 and April 2013 ARDC meetings?

HELD: **For the District**
34 C.F.R. §§300.305(a)(1), 300.320(a)(3), 300.321(a)(1), 300.322, 300.324(a)(1-2), 300.501 and 300.502(b).

3. Whether Respondent complied with procedural notice requirements for the Student’s ARDC meetings, including notice for a planned ARDC meeting on March 19, 2013?

HELD: **For the District**
34 C.F.R. §§300.324(a)(5) and 300.513(a)(2);
Adam J. v. Keller Indep. Sch. Dist., 328 F.3d 804 (5th Cir. 2003).

4. Whether Respondent provided the Parent with accurate information about the Student’s behavioral and academic progress?

HELD: **For the District**
34 C.F.R. §§300.320(a)(3)(ii) and 300.324(b).

5. Whether Respondent properly provided the Parent access to and provided copies of the Student’s record?

HELD: **For the District**
34 C.F.R. §§300.613, 300.616, and 300.617.

6. Whether Respondent provided the Student with an appropriate Individualized Education Program in the least restrictive environment that resulted in progress rather than regression on mastery of behavioral and academic goals?

HELD: **For the District**

34 C.F.R. §§300.17, 300.34(a), 300.42, 300.101, 300.105, 300.107, 300.117, and 300.320(a);
Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

7. Whether Respondent's educational program for the Student included appropriate speech/articulation and handwriting goals that enabled the Student to progress rather than regress?

HELD: **For the District**

34 C.F.R. §§300.320(a)(3-4), and 300.324(b)(1).

8. Whether Respondent provided appropriately-trained staff to work with the Student for positive behavior reinforcement and to address off-task behavior?

HELD: **For the District**

34 C.F.R. §300.156(a-c); TEX. ADMIN. CODE §89.1131.

9. Whether Respondent appropriately assessed the Student's behavior and developed a BIP that considered the Student's: a) verbal behavioral needs; b) behavioral history of Applied Behavior Analysis; and, c) response to positive reinforcement techniques?

HELD: **For the District**

34 C.F.R. §300.303, 300.304, 300.305(a-d) and 300.324(a)(2).

10. Whether Respondent failed to offer necessary summer services to the Student during the applicable period?

HELD: **For the District**

34 C.F.R. §300.106.

11. Whether the Parent is entitled to reimbursement for the parental private school placement of the Student beginning *** 2013 because Respondent timely failed to provide the Student a FAPE?

HELD: **For the District**

34 C.F.R. §300.148;
Town of Burlington v. Dep't of Edu., 471 U.S. 359. 369-370, 105 S.Ct. 1996, 202-203 (1985).

12. Whether the Student is entitled to prospective private school tuition reimbursement at *** due to Respondent's inability to provide a FAPE for the Student?

HELD: **For the District**
34 C.F.R. §300.148;
Town of Burlington v. Dep't of Edu., 471 U.S. 359. 369-370, 105 S.Ct. 1996, 202-203 (1985).

13. Whether the Parent is entitled to reimbursement for mileage for travel to *** beginning *** 2013 forward?

HELD: **For the District**
34 C.F.R. §§300.34, 300.148, and 300.513(a).

14. Whether the Parent is entitled to reimbursement for participation costs and travel expenses in the *** incurred during the pertinent period due to denial of FAPE by Respondent?

HELD: **For the District**
34 C.F.R. §§300.34, 300.148, and 300.513(a).

15. Whether the Parent is entitled to reimbursement for costs and travel expenses for speech and occupational therapy services incurred during the pertinent period due to a denial of FAPE by Respondent?

HELD: **For the District**
34 C.F.R. §§300.34, 300.148, and 300.513(a).