

DOCKET NO. 149-SE-0214

STUDENT, b/n/f/ PARENT, § **BEFORE A SPECIAL EDUCATION**
Petitioner §
§
v. § **HEARING OFFICER FOR**
§
SPRING INDEPENDENT §
SCHOOL DISTRICT, § **THE STATE OF TEXAS**
Respondent §

DECISION OF THE HEARING OFFICER

Petitioner *** (“the Student”), by next friend, *** (“the Parent”), requested a due process hearing pursuant to the Individuals with Disabilities Education (“IDEA”), 20 U.S.C. §1400, *et seq.*, against Respondent Spring Independent School District (“SISD” or “the District”). The Parent proceeded *pro se* in this dispute. Janet L. Horton, Thompson & Horton L.L.P. in Houston, Texas, represented Respondent.

CONTESTED ISSUES AND REQUESTED RELIEF

Petitioner complains that the following actions or inactions by Respondent deprived Petitioner of a Free Appropriate Public Education (“FAPE”):

1. Whether the District failed to follow the Student’s Individualized Educational Program (“IEP”) regarding the Student’s use of assistive technology (“AT”) devices of a calculator and computer during academic tasks during the applicable period;
2. Whether the District followed procedural safeguards for:
 - a. Parental consent and notification prior to changing the Student’s eligibility as a Student with a Learning Disability (“LD”);
 - b. Changing the Student’s accommodations under the most recent IEP;
 - c. Convening a meeting of the Student’s Admission, Review, and Dismissal Committee (“ARDC”) prior to adding Extended School Year (“ESY”) services to the Student’s IEP; and,
 - d. Providing and maintaining an updated list of qualified evaluators who conduct Independent Educational Evaluations;
3. Whether the District appropriately drafted, developed, and implemented the Student’s IEP, including:
 - a. Addressing the Student’s deficiencies and providing appropriate academic interventions for the Student to prepare for the State of Texas Assessments of Academic Readiness (“STAAR”) and *** in math, writing, reading, science, and social studies;
 - b. Creation and implementation of appropriate functional goals prior to December 2013; and,
 - c. Provision of one-on-one reading, writing, and math instruction;
4. Whether the District’s staff fully included the Student as a mainstreamed student regarding:
 - a. Challenging elective courses; and,
 - b. Field trip participation;
5. Whether the District provided appropriately certified special education and regular education teachers for the Student’s core curriculum classes; and,
6. Whether the District trained all general education teachers working with the Student in a timely manner to ensure that the Student received an educational benefit from the instruction.

As relief, Petitioner seeks the following:

1. Provision of an appropriate IEP and services for the Student, including correction of all deficiencies;
2. Provision of one year of compensatory services of math, reading, writing, and social studies to compensate the Student for the period of educational deprivation, including but not limited to the following:
 - a. One-on-one tutoring for the Student by a reputable contractor with demonstrated performance record of assisting special education students with the regular STAAR assessment or by certified special education and regular teaching staff;
 - b. Provision of the one-on-one tutoring in a study room at the nearest public library; and,
 - c. District reimbursement of travel expenses incurred by the parent to and from the compensatory tutoring sessions; and,
3. District Reimbursement of parental expenses for the Student's materials and services not provided by the District.

PROCEDURAL HISTORY

On February 12, 2014, Petitioner filed this due process complaint with the Texas Education Agency ("TEA"). The initial scheduling order set the hearing for March 27, 2014, and the Decision Due Date for April 28, 2014. Subsequently, the Hearing Officer granted three unopposed continuances for good cause shown and consolidated a second filing by Petitioner into this docket, revising the procedural schedule for a two-day hearing on October 7-8, 2014, and revising the Decision Due Date to November 15, 2014. The consolidated portion of the docket resolved and the Hearing Officer dismissed those claims on September 23, 2014.

The due process hearing took place as planned on October 7-8, 2014. The record of this proceeding includes 119 exhibits of Petitioner and 132 exhibits of Respondent. Petitioner presented the testimony of two SISD teachers who taught the Student, *** (***) Grade – English/Language Arts Teacher) and *** (Spanish Teacher), in addition to the testimony of the Parent and the Student. Respondent presented the testimony of seven SISD witnesses: *** (Human Resources Director for Retention and Recruitment); Dr. *** (Coordinator of Psychological Services); *** (Special Services Coordinator for Assessments); *** (Coordinator for Special Education for Speech Therapy and Preschool Program for Children with Disabilities); *** (Special Education Coordinator for ***); *** (***) Principal); and, *** (Executive Director of Special Services). Prior to the conclusion of the in-person hearing, the parties sought leave to extend the Decision Due Date to December 30, 2014, and to submit written closing statements in lieu of oral closing statements on December 5, 2014. The Hearing Officer granted this request for good cause shown. Respondent timely submitted a written closing statement by the deadline on December 5, 2014. Petitioner did not submit a written closing statement. The record closed on December 5, 2014, and the Decision of the Hearing Officer timely issued and was transmitted to the parties on December 30, 2014.

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 FACT¹

Background

1. The Student is a ***-year-old student enrolled in SISD who qualifies for special education services as a student with an Other Health Impairment (“OHI”) due to Attention Deficit Hyperactivity Disorder (“ADHD”). [P.Ex. 84; R.Ex. 1].

2. The Student originally qualified for special education in January 2012 while the Student attended school in the *** in ***. [R.Exs. 76 and 81].

3. In 2012-2013, the Student entered SISD for *** grade at *** (“***”). [R.Ex. 75].

4. Prior to enrollment in SISD, the Student’s school records from *** and from SISD established that the Student attended at least *** other schools and also received *** instruction prior to entry into SISD. [R.Ex. 95; Tr. at 312-314 and 599].

5. Due to a high level of school mobility rising to 40% per year, SISD conducted research on the impact of mobility upon students. Based on the SISD research and national research, SISD personnel learned that students who move frequently are at a higher risk of dropping out of school. [Tr. at 312-215, 333, 590-591, and 593-598].

6. The Student’s frequent moves prior to SISD enrollment and the continual interruption to the delivery of the Student’s educational curriculum for the Student were two factors that contributed to the Student’s learning gaps that existed at the time the Student entered SISD. [Tr. at 315-316 and 598-600].

2012-2013 School Year

7. At the time of the Student’s initial enrollment in SISD, the Parent filled our forms for SISD indicating that the Student received Section 504 of the Rehabilitation Act accommodations but did not indicate that the Student received special education services. [R.Ex. 75; Tr. at 444].

8. Upon receipt of documents from the Student’s previous school in ***, SISD personnel learned about the previous special education identification of the Student as having an LD in written expression. The *** documentation showed that the Student was in general education classes with a goal for writing, received accommodations, and did not receive special education transportation. [R.Exs. 75, 76, 78, and 81; Tr. at 444-447].

9. On October 4, 2012, the Student’s initial ARDC meeting at SISD took place. The Parent attended and participated in the meeting. The ARDC placed the Student in an English Language Arts (“ELA”) class two times a week for 45-minute sessions with accommodations that included: a) ***; b) check for understanding; c) blank graphic organizers; d) ***; and, e) concept cues. The ARDC developed goals and objectives for writing and placed the Student into general education classes. The program of services was based on the Student’s assessment in ***, the Student’s previous IEP from ***, and information from the Student’s new teachers in ***. The Parent consented to the initial placement. [P.Ex. 40; R.Exs. 54, 55, 73, 74, 76, 80, and 94; Tr. at 347-348 and 447-452].

¹ References to the hearing transcript of this proceeding appear as “Tr.” followed by the page number (example: “Tr. at ___”). References to exhibits appear as Petitioner’s Exhibits (“P.Ex.”), Petitioner’s Supplemental Exhibits (“P.Supp.Ex.”) or Respondent’s Exhibits (“R.Ex.”) followed by the exhibit number and page number (example: “P.Ex. 1 at 1; R.Ex. 1 at 1”).

10. The October 2012 ARDC agreed to perform a Full and Individual Evaluation (“FIE”) of the Student to determine whether the Student qualified for OHI due to ADHD. The ARDC planned to have the evaluation completed by January 30, 2013, and to convene another ARDC meeting no later than February 28, 2013, to consider the completed FIE. [P.Ex. 40; R.Ex. 55; Tr. at 348 and 451-452].

11. The Parent would not allow SISD to contact the Student’s doctor for information for the OHI eligibility as part of the Student’s FIE. The SISD Special Education *** Coordinator, Ms. ***, contacted *** and asked that an ARDC meeting be held to put accommodations in place for the Student until the FIE could be completed. [R.Ex. 41; Tr. at 452-454 and 524-528].

12. The ARDC convened on January 30, 2013, with the Parent in attendance. Participants added accommodations to the Student’s IEP for ADHD, including extended time for assignments, positive reinforcers, small group, repeated review, following the District’s grading policy, frequent breaks, ***, and an academic plan. The ARDC did not make changes to the Student’s goals, objectives, or placement at this meeting. [R.Exs. 51 and 94; Tr. at 454].

13. The Parent withdrew consent for decisions made at the January 2013 ARDC meeting. As a result, the *** campus waited five school days to implement the accommodations added by the ARDC on January 30, 2014. [P.Ex. 47; R.Exs. 48 and 49; Tr. at 455].

14. The Student’s physician filled out the OHI form on January 31, 2013. [P.Ex. 44; R.Ex. 21; Tr. at 528].

15. The SISD FIE report issued on February 14, 2013. On February 27, 2013, the ARDC convened to review the completed FIE report. The Parent attended the meeting and signed in agreement with the ARDC decisions to keep the LD eligibility label and to add OHI eligibility. Participants added accommodations for the Student of reminding the Student to remain on task, retesting if the Student scored below 70%, and use of a dictionary. The ARDC did not change the IEP goals and objectives because the FIE data did not support a change. At this time, the Student exhibited one minor behavior at SISD at the beginning of the school year, so the ARDC did not put a behavior plan in place for the Student. [P.Ex. 42; R.Exs. 45, 46, 70, and 94; Tr. at 349, 455-457, and 609].

16. On March 5, 2013, the Parent filed a complaint with TEA. In April 2013, SISD entered into an agreement with the Parent to resolve this complaint and to help close some of the “school gaps” from the Student’s previous schools attended before enrollment in SISD. The agreement included 16 extra tutoring sessions after school for reading and writing. The sessions were designed to address the Student’s deficit area of written expression and to develop lesson plans to help prepare the Student for state assessment. The agreement also specified that summer programming for the 2013 summer months would be addressed at the end of the 2012-2013 school year at an additional ARDC meeting. [P.Ex. 33; R.Ex. 44; Tr. at 458-460 and 598-600].

17. On April 5, 2013, the ARDC convened to implement portions of the agreement between the parties to resolve the TEA complaint. Participants, including the Parent, made no changes to the Student’s goals and objectives at this meeting and reached consensus. [P.Ex. 83(b); R.Ex. 43; Tr. at 458].

18. The Student’s ELA teacher and Math teacher provided the extra tutoring sessions as developed by the SISD curriculum personnel. The sessions focused on writing skills. During the STAAR testing week in April 2013, there was a break in the tutoring sessions. [Tr. at 83-84 and 459-460].

19. The Student also had access to tutorials held after school hours during the Spring 2013 semester. [R.Ex. 58; Tr. at 84-85].

20. The SISD staff working with the Student provided the Student's 2012-2013 accommodations and communicated frequently with the Parent throughout the school year. The SISD staff encouraged the Parent to bring the Student to available tutorial sessions. [P.Exs. 10, 13, 14, P.Supp.Exs. 5(h), 5(k), 5(l), and 5(o); R.Exs. 58-63, 65-66, 69, and 71; Tr. at 40-43, 75-88, 104-110, 476, and 497-498].

21. Co-teaching uses a special education teacher and a regular education teacher to plan out and deliver services within a classroom with both teachers having shared responsibility for the instruction. A person entering a classroom with a co-teacher would not be able to tell which teacher was the regular education teacher and which teacher was the general education teacher. The Student had one co-teach class during the 2012-2013 school year – *** class. [P.Ex. 64; R.Ex. 112; Tr. at 49-50 and 78-79].

22. The Student did not pass the 2013 STAAR assessment as follows: Reading, Scaled Score of *** (1556 as satisfactory score); Mathematics, Scaled Score of *** (1551 as satisfactory score); and Writing, Scaled Score of *** (3500 as satisfactory score). [R.Ex. 42 at 1; Tr. at 459, 470-471].

23. In 2012-2013, the Student passed all the general education classes without modification of the curriculum content for the *** grade. The Student's grades improved in some classes as the school year progressed. [R.Ex. 56; Tr. at 88-89, 606, and 609].

Summer 2013 Services

24. The District scheduled an ARDC meeting for May 31, 2013, to consider ESY services for the Student as previously anticipated by the parties' complaint resolution agreement. The Parent came to the *** campus but would not participate in the meeting and refused to waive five-day notice for the meeting. Instead, the District held a parent conference with the Student's teachers. [R.Exs. 41 and 67; Tr. at 460-462].

25. The Parent received notice of the June 10, 2013, ARDC meeting and gave written consent for the meeting dated Jun 6, 2013. The notice specified that the meeting would consider ESY services for the Student. [P.Ex. 31(a); R.Exs. 37 at 6 and 40 at 19-21].

26. The ARDC met as planned on June 10, 2013. The Parent participated and agreed with the decision to develop an ESY program to address the Student's areas of weakness shown on recent STAAR testing. The proposed program included 96 hours of instruction by a certified teacher and with a person experienced in working with dyslexic students. There were no changes made at this meeting to the Student's goals and objectives that remained effective through October 2013. [R.Exs. 40, 42 and 100; Tr. at 462-464, 469, and 471-473].

27. By letter dated June 12, 2013, the Parent requested an additional ARDC meeting to address the Parent's concerns over a lack of progress by the Student on annual goals. The letter included the Parent's suggested recommendations for IEP amendments. [P.Ex. 53; R.Ex. 39].

28. On June 17, 2013, the Parent withdrew consent for the ESY services adopted by the ARDC on June 10, 2013. In this letter, the Parent listed eight questions for District staff to answer concerning how the summer 2013 programming would be delivered. In response, Ms. *** sent a reply to the Parent dated June 25, 2013. [P.Ex. 54; R.Exs. 37 and 38; Tr. at 473-474].

29. At hearing, SISD Executive Director of Special Services, ***, testified concerning Ms. *** telephone call to the Parent after learning that the Student attended only one day of ESY in Summer 2013. The Parent communicated unhappiness that the other *** students in the Student's ESY program were disabled. Ms.

*** described the other *** students as “mildly disabled” students who were in general education classes during the regular school year. [Tr. at 600-602].

30. The Student attended one day of Summer 2013 services and missed 91.5 hours of instruction in the Student’s areas of weakness by not attending the remainder of the 2013 ESY services. [R.Ex. 36; Tr. at 475-476 and 601-602].

August 2013 FIE

31. The District performed another FIE of the Student in July 2013 and issued a report of the evaluation in August 2013. The FIE resulted from agreements between the parties to resolve the TEA complaint. The Parent initially signed consent for the evaluation on July 19, 2013, but by written communication dated July 30, 2013, narrowed the evaluation consent to exclude evaluation for speech or ADHD. As a result, the assessment team summarized previous testing reading the Student’s ADHD provided by the Parent with new cognitive testing. [P.Exs. 70(a-c); R.Ex. 3; Tr. at 299-301].

32. The August 2013 FIE used a “cross battery assessment” to evaluate the Student, using multiple sources of data including formal assessment, criterion-referenced assessments, information from teachers, the Student’s history, and classroom data. Based on this data, the written report determined that the Student did to a not qualify as a student with an LD. Although the Student showed weaknesses in intellectual testing, the weaknesses did not correlate with deficits in achievement testing. [P.Ex. 45; R.Ex. 2; Tr. at 341].

33. The completed August 2013 FIE report determined that the Student was eligible as OHI due to ADHD, but did not find that the Student met eligibility as LD or due to a speech language impairment. [P.Ex. 45; R.Ex. 2; Tr. at 306-308].

34. The August 2013 FIE measured the Student’s processing speed or ability to take in visual and auditory information and then respond to the information using the Woodcock-Johnson-III Tests of Cognitive Abilities. The Student exhibited poor processing speed, resulting in additional time and mental effort to accomplish this task. The Student’s diminished processing speed impacted the Student’s performance on timed activities during the testing. [P.Ex. 45; R.Ex. 2; Tr. at 306-308].

35. The August 2013 FIE compiled previous testing of the Student for the behavioral and emotional portions of the evaluation because the Parent would not allow additional testing in those areas. The written FIE report concluded that ADHD impacts the Student resulting in sustained mental attention to tasks, processing speed, and executive functioning, with a global impact on all areas of functioning. At hearing, Dr. ***, a licensed specialist in school psychology for the District and Coordinator of Psychological Services, explained that this impact was not a true learning disability with a clear pattern in a specific area such as reading. Instead, the Student’s ADHD impacts all the Student’s academic areas with fluctuations and resulting gaps in the Student’s achievement. [P.Ex. 45; R.Ex. 2; Tr. at 302-308, 311-312, and 339-340].

36. The additional August 2013 FIE testing performed by ***, SISD diagnostician, took place over four days in five or six sessions because of the Student’s inattention resulting from ADHD. The additional testing included written language, reading comprehension, achievement, and cognitive testing. [P.Ex. 45; R.Ex. 2; Tr. at 339-341].

37. Because the Parent declined speech evaluation as part of the August 2013 FIE, the evaluating speech language pathologist, ***, reviewed existing speech language data and the new testing performed by *** for consolidation into the written August 2013 FIE report. As part of this data, Ms. *** reviewed information from the *** provided by the Parent. The *** evaluation used a medical model rather than an educational model to conclude that the Student required speech therapy. As part of that evaluation, the *** administered the

Comprehensive Assessment of Spoken Language (“CASL”), an oral test to assess grammar, vocabulary, pragmatic ability, and social language. The core composite score on the CASL measures global language performance. The Student’s core composite score of *** fell within the average range. The Student’s CASL scores included areas of strength such as a score of ***, or within the average range, for verbal comprehension. The Student also exhibited areas of weakness such as a score of ***, or within the below average range, in Meaning from Context. [P.Exs. 19 and 45; R.Exs. 2 and 7; Tr. at 382-383 and 408-409].

38. Ms. *** applied an educational model to the data in the *** evaluation data as part of the August 2013 FIE review. Under the educational model, a variety of scores are reviewed, including formal and informal assessment. Ms. *** plotted the Student’s *** evaluation scores into a bell curve score plot to better discuss the results with the Parent prior to the ARDC meeting. The meeting with the Parent lasted over three hours. The bell curve score plot revealed that all the Student’s scores fell within the average range of *** and above for speech language abilities with the exception of the Meaning from Context score of ***. The assessment team determined that the Student’s scores did not exhibit a pattern of speech language weaknesses over time and concluded that the Student did not qualify as a student with a speech language disability. [P.Ex. 19; R.Exs. 4, 5, 6 and 7; Tr. at 343-344, 308, 380-383, 393-395, 407-409, 412, and 435].

39. Ms. *** compared the Student’s linguistic data from previous assessment with the August 2013 FIE results in written format in preparation for the due process hearing. This comparison revealed that the Student does not have consistent below average linguistic ability, but instead functions appropriately. Information in the testing data showed the effect of ADHD, inattentive type, on the Student over time. The Student’s test scores were inconsistent – at times, the Student had low scores and at other times, had average scores. By contrast, if the Student exhibited a language disorder, the Student’s scores would remain low at all times. [R.Ex. 6; Tr. at 384-393 and 430-434].

40. The Student’s August 2013 FIE results established that the Student has a weakness in academic vocabulary, words used to analyze, describe, draw conclusions, infer, compare, and contrast that are learned in the classroom. By contrast, the Student does not exhibit a vocabulary weakness in casual everyday speech. The academic vocabulary weakness is not a disorder in communication and can be affected by attendance, focus and attention, and lack of exposure. [P.Ex. 45; R.Exs. 2 and 6; Tr. at 390, 395-396, and 409-411].

41. The August 2013 FIE included recommendations for the Student to use by the ARDC for further development of the Student’s IEP. These recommendations included teaching mnemonics to aid in recall, provide *** for the Student’s use during instruction, and the ***. [P.Ex. 45 at 23-24; R.Ex. 2 at 23-24; Tr. at 396].

2013-2014 School Year

42. On August 23, 2013, SISD scheduled an ARDC meeting for the Student. The meeting was cancelled by the Parent. SISD rescheduled the meeting for August 30, 2013. As planned, the ARDC convened for discussion of the August 2013 FIE and development of the Student’s IEP on August 30, 2013. [R.Exs. 1 and 118; Tr. at 356].

43. Because of the change in the ARDC meeting dates, the Student began the 2013-2014 school year with the previous school year’s accommodations in place. [R.Exs. 1 and 9; Tr. at 356-357, 478-480].

44. At the ARDC meeting on August 30, 2013, participants discussed the August 2013 FIE, reviewed the Student’s Present Levels of Academic and Functional Performance based on the FIE, reviewed information from the Student’s teachers, and reviewed the Student’s 2013 STAAR testing results. The ARDC developed four goals and objectives for the Student with “scaffolded” or gradually increasing percentage mastery criteria. Three of the four goals addressed the Student’s language needs, including the Student’s

weakness in vocabulary by working on unfamiliar and ambiguous words or words with novel meaning. The ARDC proposed accommodations for the Student, including: a) opportunity to respond orally; b) verbalize steps needed to complete tasks; c) opportunity to repeat and explain instructions; and, d) check for understanding by teachers. [R.Ex. 1; Tr. at 344-346, 396-398, 412-414, 434, and 561-563].

45. The Parent requested an AT evaluation of the Student during the ARDC meeting on August 30, 2013. The meeting deliberations of this meeting reflect the Parent's withdrawal of this request when the ARDC agreed to include computer access for the Student in the Student's IEP as an accommodation. [R.Ex. 1; Tr. at 346 and 398-399].

46. The Parent signed in disagreement with the decisions of the ARDC on August 30, 2013. The assessment team again met with the Parent after this meeting to review testing protocols from the August 2013 FIE. [Tr. at 347 and 399].

47. During the Fall 2013 semester, the Student received additional ELA interventions of a computerized reading program, the *** program, twice a week for 30-minute sessions. To avoid interfering with the Student's English class, the District adjusted the Student's *** times. The Student also received math interventions delivered on a one-on-one basis by District staff for reinforcement of classwork. These interventions continued until December 2013 when all students on the *** campus received an intervention period during the school day. [R.Exs. 26, 26(a), and 27; Tr. at 481-484].

48. The Parent filed a second complaint with TEA on November 3, 2013. The Parent challenged whether the District implemented co-teachers in the Student's classroom for the 2013-2014 school year and whether the Parent was included in decisions made concerning the Student in the 2012-2013 school year. [R.Ex. 114 at 17].

49. On December 3, 2013, the ARDC convened to review the Student's IEP goals and objectives, data collection, and review of programming. The Parent attended the meeting. Participants reviewed proposed language arts goals and objectives, discussed the Parent's request for functional goals, and ARDC participants made plans for a functional behavioral assessment ("FBA"), to be conducted by a behavioral specialist and completed by January 31, 2014. ARDC participants tabled the meeting with plans to reconvene on December ***, 2013. The Parent, however, withdrew the Student from SISD on December ***, 2013. As a result, the ARDC did not reconvene as scheduled on December ***, 2013. [R.Ex. 1(a); Tr. at 349-351].

50. On January 6, 2014, TEA issued the written report of the Parent's second complaint. The report found for the District on both issues. [R.Ex. 114 at 1-2].

51. The ARDC reconvened the tabled meeting on January 7, 2014, with the Parent in attendance. Participants made some changes to the Student's language arts goals but did not change the Student's math goals and objectives. The meeting ended in disagreement. Minutes of this meeting note that the Student's withdrawal from SISD delayed the scheduled completion of the FBA that was originally scheduled for January 31, 2014. [R.Ex. 1(a); Tr. at 315-316].

52. The Parent re-enrolled the Student on January ***, 2014. At this time, the Student had missed *** school days and was not put back into Spanish, a class taken by the Student for ***, because the Student had missed too many classes for receipt of credit. On January 13, 2014, the Parent provided an amended letter to add to the ARDC documentation of the meeting held on January 7, 2014. [R.Ex. 1(a) at 32, R.Ex. 1(b) at 18, and R.Exs. 96-97; Tr. at 540-543].

53. The ARDC reconvened after a 10-day recess on January 21, 2014, to address the Parent's areas of disagreement. All participants agreed to extend the date for completion of the FBA to February 24, 2014, due to the Student's withdrawal during the FBA preparation period. The ARDC did not change the language arts goals and objectives from the previous ARDC meeting and did not change the accommodations in place for the Student since the August 2013 ARDC meeting. The ARDC did not add tutorials to the Student's IEP. The meeting ended in disagreement and the ARDC implemented the program after giving the Parent five-day notice. [R.Exs. 1, 1(a), 1(b), and 109; Tr. at 352-353].

54. SISD completed the FBA on February 25, 2014. The FBA included formal observation by a Board Certified Behavior Analyst, ***, in the Student's core classes over four different days for a total of two hours and three minutes of observation time. The only behavioral concern observed in the classroom was that the Student occasionally exhibited off-task behavior, such as appearing to stare away from the expected activity. On one occasion, Ms. *** observed off-task behavior as the Student interacted with another student instead of starting the expected activity. When the Student was off-task, teachers would stop by the Student's desk or prompt the Student and in response, the Student returned back to the expected task without further redirection. [R.Ex.1(c) at 7-12].

55. Ms. *** also reviewed the Student's conduct grades, discipline records, and attendance records. Ms. *** attempted to meet with the Parent twice, but the Parent did not attend either meeting. Based on the FBA data and observation, the Student exhibited no behaviors that interfered with school performance and did not need a formal behavior intervention plan. The FBA considered whether the Student needed to have functional goals, but Ms. *** found that there was no reason to develop functional goals for the Student. [R.Ex.1(c) at 7-12 and R.Ex. 120; Tr. at 317-318 and 355-356].

56. The District attempted to schedule a meeting with the Parent to discuss the completed FBA prior to an ARDC meeting, but the Parent did not want to meet. [R.Ex. 120; Tr. at 317-318].

57. April 4, 2014, the ARDC convened with the Parent in attendance for discussion of the completed FBA report. Participant discussed the AT and speech evaluations previously requested by the Parent in August 2013. At this time, the Parent had not signed written consent for the evaluations. The Parent signed consent for the AT evaluation during the meeting, but withheld consent for a speech evaluation. [R.Exs. 1(c) and 107; Tr. at 354-355].

58. The Parent withdrew the Student for the second time in the 2013-2014 school year on April ***, 2014. The Student re-enrolled on April ***, 2014. During this time period, the Student missed one of the STAAR assessments. [R.Exs. 24, 24(a), and 97; Tr. at 541-544].

59. The District provided additional interventions and supports to help the Student prepare for the STAAR assessment. These interventions were built into the Student's school day beginning in December 2013. [R.Ex. 24(b); Tr. at 545-550].

60. The Student did not pass the STAAR testing in Spring 2014. The Student, however, made progress from the previous 2013 STAAR testing and exceeded the STAAR progress measure in reading and met the progress measure in math. The Student's 2014 STAAR ***-grade results were higher than the Student's 2013 STAAR ***-grade results: Reading, Scaled Score of *** (missed passing by *** – 1575 as satisfactory score); Mathematics, Scaled Score of *** (missed passing by *** – 1583 as satisfactory score); Social Studies, Scaled Score of *** (3500 as satisfactory score); and, Science, Scaled Score of *** (3500 as satisfactory score). [R.Ex. 42; Tr.at 498-499].

61. In May 2014, Dr. *** attempted to schedule an ARDC meeting with the Parent for discussion of the STAAR testing results for May 12, 2014. On May 9, 2014, Dr. *** and the Parent spoke, adjusting the time of the ARDC meeting to an earlier time for the Parent's convenience. As the parties agreed on the telephone for this meeting, Dr. *** informed the Parent that the written ARDC notice would be at the meeting for the Parent's signature. The Parent did not attend the meeting, so participants did not hold an ARDC meeting on that day. [R.Ex. 120; Tr. at 316-317].

62. On June 23, 2014, the ARDC convened to develop an intensive program of instruction prior to the third administration. Student chose to take the STAAR for the third administration. [R.Exs. 122 and 123; Tr. at Tr. at 357 and 498-499].

63. The Student's 2013-2014 accommodations included access to a computer for long assignments. The Student could choose to use the computer or the Student's ELA teacher could direct the Student to use the computer in the ELA classroom. The ELA classroom teacher did not force the Student to use the computer for classroom assignments. [Tr. at 476 and 611].

64. The Student received co-teach classes in the 2013-2014 school year in *** and *** classes. In *** class, the Student received in-class support. The co-teacher helped coordinate and collaborate with the classroom teacher to deliver the Student's instruction and assessment of the Student's performance. The co-teacher schedules established that the Student received all scheduled co-teach services for the Student's *** and *** classroom periods. [P.Ex. 64; R.Ex. 1 at 16, R.Ex. 112, and R.Ex. 30; Tr. at 476-477, 481-491, and 516-517].

65. Co-teachers in combination with regular education teachers determined through consultation and collaboration whether the Student mastered goals and objectives. The Student mastered all IEP goals and objectives for the 2013-2014 school year. [R.Exs. 11-20, R.Ex. 32, and R.Ex. 35; Tr. at 465-469 and 491-497].

66. The District provided a case manager for the Student's 2012-2013 and 2013-2014 school years to help monitor the Student's progress, to help develop the Student's IEPs, to consult with the Student's teachers and co-teachers, to assist in ensuring accommodations and IEPs were distributed to the Student's teachers, and to ensure the implementation of IEP changes by teaching staff that took place during the school years. [R.Ex. 9; Tr. at 79-80, 478-480, 494, and 521-522].

67. The District provided the Student's accommodations, goals, and objectives to the teachers implementing the Student's educational program. [R.Ex. 9; Tr. at 478-479].

68. The Student's IEP did not require SISD to provide textbooks, study guides, or workbooks for the Student's home usage. [R.Ex. 1 and 31; Tr. at 539-540 and 576].

69. The Student participated in a *** class during the 2013-2014 school year, a research-based, general education *** class during the *** class period. The *** class was not considered a core curriculum class but *** class. [R.Exs. 29 and 30; Tr. at 556 and 602-605].

70. Students in the *** grade at *** in 2013-2014 who had a core content class during the *** class period went on a field trip *** at staggered times because not all students could go on the trip at the same time. The Student had the opportunity to go on the field trip at the end of the school year with students in the *** grade who did not have a core content class during the *** period. [R.Ex. 30; Tr. at 553-556].

71. The Student did not attend the *** field trip at the end of the 2013-2014 school year and did not return the permission slip to be able to participate. [R.Ex. 30; Tr. at 556].

72. The Student had excessive absences in the *** program with *** sessions during the 2013-2014 school year in addition to the two time periods when the Student was withdrawn from the District. These absences included *** when the Parent took the Student out of school for private speech therapy. The excessive absences impacted the Student's *** progress as the Student missed core instruction on *** and interrupted the overall flow of instruction. [R.Exs. 29, 30, and 33; Tr. at 605-606].

73. The Student also missed Spanish and *** classes on *** when the Parent took the Student out of school for private speech therapy. Repeated absences like these impact a student's course progress. [R.Exs. 30 and 33; Tr. at 122, 166, and 606].

74. Even with the Student's excessive absences, the Student made progress in general education classes without modification of the curriculum during the 2013-2014 school year. [R.Exs. 32, 34, and 56; Tr. at 609-610].

75. The Student was engaged and an active participant in the classroom even with the need for frequent redirection. The Student had no disciplinary issues and received satisfactory to excellent conduct grades during the 2013-2014 school year. [R.Exs. 34 and 56; Tr. at 82-83 and 609-610].

76. The District gives the *** to all English class students in the *** and *** grades across the District to measure how well students perform in the curriculum. The Student showed reading improvement on subsequent *** administrations. [R.Ex. 108; Tr. at 615-616].

77. The District repeatedly provided a copy of the IDEA procedural safeguards to the Parent. [R.Ex. 52 and 106; Tr. at 358-359 and 509].

78. The District assessment staff and teaching staff who worked with the Student do not believe that the Student requires one-on-one instruction to make progress in reading, writing, and math or to address gaps in the Student's learning. [Tr. at 80-81 and 346-347].

79. One-on-one instruction for the Student would remove the Student from the general education classroom and would not allow the Student to have access to the general education curriculum with interaction with peers. [Tr. at 346-347].

80. The District completed the AT evaluation on May 19, 2014. The evaluation did not recommend inclusion of any AT device or strategies not already implemented for the Student during the 2013-2014 school year. [R.Ex. 121].

81. On August 12, 2014, the ARDC convened twice with the Parent in attendance. The first meeting, a grade placement meeting, determined that the Student should attend the *** grade for the 2014-2015 school year. The second meeting, the Student's annual ARDC meeting, included discussion of the completed AT evaluation, the Student's progress of mastery of all goals and objectives, and passing grades in all general education classes. [R.Exs. 124 and 125; Tr. at 357-358].

82. There is no data in the record to show that the Student needed the use of a calculator for STAAR testing. The ARDC repeatedly considered the Parent's request that the Student be able to use a calculator for testing, but did not add a calculator as an accommodation. [P.Ex. 75; R.Exs. 1, 2, and 18(a); Tr. at 359-368 and 577-578].

83. The District’s special education staff supported the general education staff working with the Student and provided “staffings” to discuss the Student’s accommodations. [Tr. at 586 and 610-611].

84. The District granted the Parent’s September 2013 IEE request and subsequently provided information to the Parent regarding possible IEE providers. The Parent did not communicate with the District about the IEE until January 23, 2014. By February 12, 2014, the District responded to the Parent’s concerns about the IEE provider list. [R.Exs. 99, 109, 110, and 119; Tr. at 612].

85. The Parent requested a language evaluation during the 2013-2014 school year, but never provided written consent to complete the language evaluation. [Tr. at 616].

DISCUSSION

This dispute concerns a *** student who has received instruction in the general education classroom with accommodations to address the Student’s OHI due to ADHD. The Student’s Parent has been actively involved in the education of the Student since first enrollment within SISD for the 2012-2013 school year. The Parent, however, does not believe that the Student’s educational program within SISD delivered a FAPE to the Student and complains that the Parent was not a full participant in all phases of the Student’s educational plan development and implementation. By contrast, Respondent believes that the Student’s educational program was appropriately developed based on assessment and performance and resulted in progress within the least restrictive environment. Respondent believes that SISD implemented the Student’s program by trained staff in a coordinated and collaborative manner.

Applicable Law: Free Appropriate Public Education (“FAPE”)

Under IDEA, each disabled student has a right to receive a FAPE with special education and related services designed to meet the student’s unique needs and to prepare the student for further education, employment, and independent living.² Under IDEA, each disabled student is guaranteed a “basic floor of opportunity” with specialized instruction and related services that are individually designed to provide an educational benefit to the student.³

The U.S. Supreme Court established a two-part test for determining whether a school district provided a FAPE to a student under IDEA: 1) did the school district comply with IDEA’s procedures; and, 2) was the IEP

² 20 U.S.C.S. § 1400(d)(1)(A); 34 C.F.R. § 300.1.

³ *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189 (1982).

reasonably calculated to confer educational benefit to the student.⁴ No particular substantive standard is imposed upon states under *Rowley*.⁵

In the Fifth Circuit, the party attacking the appropriateness of a student's IEP created by a local education agency bears the burden to show why the IEP was inappropriate under IDEA.⁶

The Fifth Circuit established criteria and set out four factors to consider as indicators of whether an educational program is reasonably calculated to provide a student with a meaningful benefit:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated and collaborative manner by the key stakeholders; and,
- Positive academic and non-academic benefits are demonstrated.⁷

The Fifth Circuit has not specified how the four factors must be applied; instead, the factors serve as indicators of an educational program's appropriateness and are intended to guide a court's fact-intensive inquiry regarding whether an educational program conferred an educational benefit.⁸

Once parents and a school district agree to a student's IEP, the school district must implement the IEP.⁹ Failure to implement a material or significant portion of the IEP can amount to a denial of FAPE, but the party challenging the implementation of the IEP must show that the failure to implement was more than a *de minimis* failure to implement all IEP elements. Instead, the challenging party must show that the school board or other authorities failed to implement substantial or significant provisions of the IEP.¹⁰

A hearing officer must make a determination that a student did not receive a FAPE based on substantive grounds.¹¹ In matters alleging procedural violations, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or caused a deprivation of educational benefit.¹²

⁴ *Rowley*, 458 U.S. at 176.

⁵ *Rowley*, 458 U.S. at 200.

⁶ *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245, 252 (5th Cir. 1997).

⁷ *Michael F.*, 118 F.3d at 247-249.

⁸ *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

⁹ 20 U.S.C.S. § 1414(d)(2)(A); 34 C.F.R. § 300.323; *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012).

¹⁰ *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5th Cir. 2000). See also *Corpus Christi Indep. Sch. Dist. v. C.C.*, 59 IDELR 42 (S.D. Tex. 2012).

¹¹ 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(1).

¹² 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2).

A school district's educational program is presumed appropriate and the party challenging a 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.¹³ In this proceeding, Petitioner has the burden to show why the IEP and services provided to the Student were not appropriate under IDEA. Petitioner alleged both procedural and substantive violations in this dispute.

Provision of FAPE – Procedural Violations

The Petitioner alleges four procedural violations by the District. First, Petitioner alleges that the District failed to get consent from or notify the Parent before changing the Student's eligibility from LD to OHI. The record in this dispute established that the District changed the Student's special education eligibility to OHI in August 2013 after gathering new assessment information using the August 2013 FIE with the Parent's input and involvement in an ARDC meeting held on August 30, 2013.¹⁴ The Parent received notice of this ARDC meeting that specifically detailed the plans to review the assessment results and the Parent received a copy of the procedural safeguards on August 23, 2014.¹⁵

Under IDEA and its implementing regulations, parental consent must be obtained prior to the initial provision of special education services.¹⁶ There is, however, no requirement that parental consent must be obtained before changing a student's eligibility. I conclude that no violation occurred and Petitioner failed to prove otherwise on the first procedural challenge.

Petitioner's second procedural allegation concerns whether the District complied with procedural requirements when the Student's accommodations were changed under the Student's most recent IEP. The record in this proceeding shows that the District developed accommodations for the Student's 2013-2014 school year in August 2013 at the ARDC meeting of August 30, 2103. Once adopted, the Student's accommodations did not change during the 2013-2014 school year.¹⁷ The Parent did not meet the burden of proof to prove the second procedural allegation and I conclude no violation occurred.

¹³ *Schaffer v. Weast*, 126 U. S. 528 (2005); *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).

¹⁴ P.Ex. 84; R.Exs. 1 and 2.

¹⁵ R.Ex. 1 at 25-27

¹⁶ 20 U.S.C. § 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.300(b).

¹⁷ Tr. at 354.

The Parent's third procedural violation concerns whether the District convened a meeting of the ARDC prior to adding ESY services for the Student's Summer 2013. The testimony and exhibits show that the Parent received proper notice of the ESY notice to be discussed at the ARDC meeting of June 10, 2013. The Parent attended this meeting and fully participated in the discussion of ESY services.¹⁸ Petitioner did not provide evidence to the contrary and I conclude that no procedural violation occurred regarding the addition of Summer 2013 ESY services for the Student.

The Parent's fourth procedural violation allegation concerns the provision of a list of qualified evaluators for performance of IEEs. Specifically, the Parent alleged that the District did not provide a list of qualified IEE evaluators that met District qualifications. The record evidence and testimony in this proceeding, however, established that the District provided two copies of the list of IEE providers to the Parent – in September 2013 and again in February 2014. The Parent ultimately chose an IEE evaluator not on the list of providers and the District approved the Parent's choice of providers.¹⁹ I conclude that no procedural error occurred regarding a procedural violation for the IEE provider list.

Provision of FAPE – Consideration of Indicators

Turning to the Parent's substantive allegations in light of the Fifth Circuit's four indicators, I consider each indicator together with the documentary evidence and testimony in this record.

A. Individualized Program

a. The Student's IEP Development and Implementation

The extensive exhibits and testimony in this record presented by both parties established that the District developed the Student's IEP within the ARDC process using input of the Student's teachers, Parent, and current assessment information from District and private evaluators.

Upon the Student's entry into the District in 2012, SISD gathered information from the Student's previous placement in *** that included educational records and assessment information, and also used information from the Student's *** staff and the Parent. The Student's IEP was further developed by the ARDC with the Parent in August 2013, using the new assessment data from the August 2013 FIE, other current assessment that included the Spring 2013 STAAR results, the Student's school performance, input from the Student's teachers and staff, and input from the Parent.²⁰ The December 2013 and January 2014 ARDC

¹⁸ R.Ex. 100 (transcript and recording of ARDC meeting, June 10, 2013).

¹⁹ R.Ex. 110; Tr. at 612.

²⁰ R.Ex. 1.

meetings made some changes to the Student's goals and objectives based on the input of staff and the Parent.²¹ The Student's IEPs addressed the Student's specific needs such as extra intervention services for math and reading for areas of weakness and to help prepare the Student for the STAAR assessment.

When the Parent requested functional IEP goals for the Student during the 2013-2014 school year, the ARDC considered this request but ultimately did not include functional goals because the new August 2013 FIE did not show that the Student *needed* functional goals.²² Petitioner did not meet the burden to prove that the Student's IEP were not meaningful or individualized.

b. Summer 2013 Extended School Year (“ESY”) Services

Under the Texas Administrative Code, a school district must consider a student's need for ESY services annually on an individual basis and must document the need for ESY from formal or informal evaluations provided by parents or school districts that show demonstrated regression.²³ The record in this proceeding established that the Student's ARDC reviewed the Student's areas of weakness on the STAAR test and assessment data, as well as the parties' agreement to resolve the first TEA complaint, and agreed to provide ESY services of 96 hours of instruction for Summer 2013 based on the Student's individualized needs.²⁴ This determination of ESY services also considered the Student's school performance and needs identified through assessment to design a program of services for reading and math instruction.

Unfortunately, the record before me also established that the Student attended a single day of the available Summer 2013 ESY services because the Parent chose not to bring the Student for the remainder of the program.²⁵ As a result, the Student lost the opportunity for an additional 91.5 hours of instruction available for Summer 2013 that could have assisted the Student in filling in “gaps” in learning.

Throughout the development of the Student's IEP, the record before me established that the Parent expressed disagreement with IEP development. The overwhelming evidence in the record shows that the Parent's input, concerns, and questions were considered and addressed by the ARDC as they arose. I conclude that the Parent was a full participant throughout this educational process and Petitioner did not meet the burden to prove otherwise.

²¹ R.Ex. 1(a).

²² R.Exs. 1(b) and 1(c).

²³ 19 TEX. ADMIN. CODE § 89.1065.

²⁴ R.Exs. 40 and 100.

²⁵ R.Ex. 36; Tr. at 475-476 and 601-602.

B. Academic and Nonacademic Benefits

The exhibits and testimony of the Student's SISD teachers support the receipt of both academic and nonacademic benefits to the Student. The Student made academic progress in general education classes as measured by the Student's educators, including the co-teachers' input, through grades and through achievement of mastery of all IEP goals and objectives. This progress occurred without instructional content modification. The Student also progressed on the STAAR assessments to an accepted level and a level exceeding expectations for the 2014 STAAR testing for the *** grade.²⁶ Behaviorally, the Student had only one behavioral incident in two years at SISD – at the very beginning of the 2012-2013 school year.²⁷ The Student had no behavioral incidents in the 2013-2014 school year. Based on the testimony of the Student's educators, the educational records of the District, and the assessment results, I conclude that the Student made progress under the District's program. Petitioner did not meet the burden to prove inadequate academic or nonacademic progress.

C. Least Restrictive Environment (“LRE”)

A student with a disability must be placed in an environment that is the least restrictive setting in which the student can receive a meaningful educational benefit.²⁸ To make this determination, the ARDC must consider what type of environment will allow the disabled student to receive an appropriate education.²⁹ The Parent challenged the appropriateness of the Student's instructional setting throughout this dispute, believing that the Student *required* one-on-one instruction in reading, writing, and math in order to benefit from the educational program.

Review of the objective indicators of academic benefit on the record before me requires review of the Student's grades, mastery of goals and objectives, and assessment results. The abundant exhibits in this record regarding these objective indicators do not support the Parent's challenge because the Student made academic progress as shown by grades, mastered all goals and objectives as shown by ARDC documents, and there were no additional assessment results to support any need by the Student for one-on-one instruction.

***, SISD Special Services Coordinator for Assessments, testified at hearing about her observations and conclusions while conducting the intelligence and achievement portions of the August 2013 FIE. Ms. *** found no data to show that the Student required “pull out” time from the general education classroom for one-on-one

²⁶ R.Ex. 42 at 2.

²⁷ Tr. at 609.

²⁸ See *T.R. v. Kingwood Twp. Board of Education*, 205 F.3d 572 (3d Cir. 2000); 34 C.F.R. § 300.114.

²⁹ *Houston Independent School Dist. v. V.P.*, 582 F.3d 576, 586 (5th Cir. 2009).

instruction in order for the Student to be able to understand concepts or to make progress in reading, writing, and math instruction. Ms. *** testified, credibly, that the general education classroom provided the Student with full access to the TEKS curriculum and with exposure to other students, both of which provided a greater benefit to the Student than removing the Student from that setting for one-on-one instruction outside the general education classroom.³⁰

The SISD Executive Director of Special Services, ***, testified at hearing about her analysis of the Student's program and progress. After her review, Ms. *** found that this information did not support removal from the general education classroom. Ms. *** believed that the one-on-one instruction of the Student with one adult would be too restrictive an environment because the Student enjoyed being with peers and the Student participated in small group learning with peers, providing learning situations with peer exchanges in which students taught each other.³¹

The Parent challenged the Student's field trip participation *** during the 2013-2014 school year. However, the credible hearing testimony of the Student's *** Principal, ***, established that the Student had the opportunity to go on this field trip but never returned the required permission slip.³²

The Parent also alleged that the Student was not allowed to take "challenging" elective courses, but presented only evidence concerning the Student's Spanish class.³³ As the Student's Spanish class was a *** class, the hearing testimony and evidence in this record conclusively established that the Student did not get credit for Spanish in Fall 2012 as the Student missed too many class days to receive credit because the Parent withdrew the Student from SISD.³⁴ I conclude that Petitioner did not meet the burden to prove the denial of any other electives or challenging courses for the Student.

The record evidence of the Student's progress supports the receipt of both academic and nonacademic benefits in the general education setting for this Student without the addition of any one-on-one instruction outside the LRE environment of the general education classroom. Based on the record before me, I conclude that Petitioner did not meet the burden to show that the Student needed a more restrictive environment beyond the general education class setting provided under Respondent's program. By contrast, the Student made

³⁰ R.Ex. 2; Tr. at 346-347.

³¹ Tr. at 616-617.

³² Tr. at 556.

³³ P.Supp.Exs. 5(l) and 5(m); Tr. at 251.

³⁴ R.Exs. 96-97; Tr. at 540-543.

progress in this general education setting and mastered all goals and objectives despite frequent absences and two withdrawals of the Student by the Parent from the District.

D. Coordination and Collaboration of Educational Services

At all junctures of this dispute, the Parent challenged the District's collaboration and coordination of services to the Student. Review of the specific facts in this dispute, however, reveals that Petitioner's challenge is not supported by the plethora of evidence of the District's efforts and demonstrated response to questions and concerns of the Parent.

First, it is undisputed that the Parent attended all the ARDC meetings in this dispute and fully participated in the meetings. When the Parent refused to participate in an ARDC meeting discussed by telephone for May 31, 2013, the District's records show that this meeting did not go forward on that date and the District sent out notice for a subsequent meeting that went forward on June 10, 2013.³⁵ ***, SISD Special Education Coordinator for ***, gave credible hearing testimony that this meeting did not take place because the Parent refused to waive five-day written notice and the Parent left.³⁶ Petitioner presented no evidence to establish that the Parent was excluded from ARDC meetings or that any ARDC meetings took place without the Parent's knowledge or attendance.

Second, review of the record before me conclusively established that the District promptly responded to inquiries from the Parent for additional information, timely answered specific parental questions, and regularly communicated information about the Student's progress as shown by Petitioner's own exhibits.³⁷ The extensive communications between SISD staff and the Parent addressed a multitude of parental concerns and the record before me shows that the Parent received copies of a set of textbooks, workbooks, study guides, and the ELA scope and sequence documents for the *** grade.³⁸

Third, the documentary evidence and hearing testimony show that the SISD staff coordinated the Student's services at all times pertinent to this dispute. The District staff working with the Student held

³⁵ R.Exs. 40, 41 and 67.

³⁶ Tr. at 460-462.

³⁷ In addition to regular progress updates and grades, Petitioner's and Respondent's exhibits admitted in this record contain specific communications that went back and forth between school staff as well as between school staff and the Parent relating to parental concerns. These communications include but are not limited to the following exhibits: P.Exs. 4 - 14, 33, 46, 70(b- c), 74, 93-94, and 95; P.Supp.Exs. 5(b-c), 5(f-v); R.Exs. 11, 13, 16, 19, 22, 24, 24(a-b), 25, 28, 37- 39, 41, 48-49, 53, 58, 60, 62- 69, 71-72, 86, 109-110, 118-120, 122, and 128.

³⁸ R.Exs. 21, 21(a), 31 and 35; Tr. at 237, 277, 483-484, and 540.

appropriate certification and received appropriate training on the Student's goals and objectives over both the 2012-2013 and 2013-2014 school years.³⁹

Fourth, the Parent's allegation concerning failure to provide the Student with a needed calculator for the 2013-2014 school year is not supported by the exhibits and testimony in this dispute.⁴⁰ The Student did not meet the criteria for use of a calculator on the STAAR testing as an accommodation because the Student did not have a physical disability that prevented independent writing of numbers, did not have a vision impairment that prevented seeing numbers, and did not have a math disability that impacted math calculations.⁴¹ Petitioner presented no additional assessment or other evidence that the Student required such an accommodation. By contrast, the record shows that the District fully implemented the accommodation needed by the Student – access to a computer. I conclude that Petitioner did not meet the burden to prove that the Student required the additional accommodation of a calculator and did not prove that the Student required, but did not receive, any other identified accommodations.

Based on the above, I conclude that the District met IDEA's requirement that the Student's IEP be developed and implemented collaboratively. Throughout this process, the Parent was a full participant and the District responded to parental requests. Petitioner did not meet the burden to prove a lack of coordination or collaboration of the Student's special education services.

CONCLUSION

After review of the record and consideration of the sole written closing argument filed in this dispute, I find that Petitioner did not meet the burden to prove that the educational program offered by the District was inappropriate and denied a FAPE to this Student. Petitioner also failed to prove any procedural or substantive violations by the District. I conclude that the District provided an educational program that was individualized for this Student based on educational records, assessment, and demonstrated progress. The District delivered this program in the LRE appropriate for the Student – the general education classroom. Within the general education setting, the Student progressed as demonstrated by grades, assessment data, and the credible hearing testimony of the Student's educators. The Student received both academic and nonacademic benefit from the District's educational program. The Student's IEPs, developed in full collaboration and participation with the Parent and delivered with coordination of all providers, resulted in an

³⁹ R.Exs. 9 and 93; Tr. at 282-286 and 478-479.

⁴⁰ R.Ex. 121; *See* 34 C.F.R. §§ 300.5 and 300.324(a)(2)(v) (regarding assistive technology).

⁴¹ R.Ex. 18(a) (concerning calculation devices allowed for an accommodation on the STAAR assessment).

educational benefit for this Student despite excessive absences and two withdrawals and re-enrollments of the Student by the Parent. Petitioner did not introduce evidence to show otherwise.

Accordingly, I deny all 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 under Respondent's program of special education services. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *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); 34 C.F.R. § 300.101.
3. The IEPs developed by Respondent for the Student were appropriate and designed to deliver an educational benefit to the Student. The Student received a meaningful educational benefit from Respondent's IEPs and Petitioner did not meet the burden to prove otherwise. *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189 (1982); 34 C.F.R. § 300.320(a).
4. The Student's IEPs developed and provided by Respondent met all four prongs of the *Michael F.* test and were reasonably calculated to provide the Student with a FAPE. Petitioner did not meet the burden to prove otherwise. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245, 246-248 (5th Cir. 1997); 34 C.F.R. §§ 300.320, 300.324, 300.513(a); 19 TEX. ADMIN. CODE § 89.1055.
5. Respondent complied with all procedural requirements of IDEA. Petitioner did not meet the burden to prove otherwise. *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003); 34 C.F.R. §§ 300.322, 300.324(a-b); 19 TEX. ADMIN. CODE §§ 89.1050(h), 89.1055, and 89.1065.
6. Petitioner did not meet the burden to prove any issue in this dispute.
7. All relief requested by Petitioner is denied.

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 30th day of December 2014.

/s/ Mary Carolyn Carmichael

Mary Carolyn Carmichael
Special Education Hearing Officer

NOTICE TO THE PARTIES

This Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decision made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 34 C.F.R. § 300.516; and 19 TEX. ADMIN. CODE § 89.1185(n).

DOCKET NO. 149-SE-0214

STUDENT, b/n/f/ PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
SPRING INDEPENDENT	§	
SCHOOL DISTRICT,	§	THE STATE OF TEXAS
Respondent	§	

SYNOPSIS OF DECISION

1. **Whether the District followed the Student’s Individualized Education Program (“IEP”) regarding the use of assistive technology devices of a calculator and a computer during the applicable period?**

HELD: For the District

34 C.F.R. §§ 300.5, 300.320, and 300.324(a)(2)(v).

2. **Whether the District followed procedural safeguards?**

HELD: For the District

**34 .F.R. §§ 300.322 and 300,324(a-b);
19 TEX. ADMIN. CODE §§ 89.1050(h), 89.1055, and 89.1065.**

3. **Whether the District appropriately drafted, developed, and implemented the Student’s IEP?**

HELD: For the District

**34 C.F.R. §§ 300.320(a) and 300.324;
19 TEX. ADMIN. CODE § 89.1055.**

4. Whether the District staff fully included the Student as a mainstreamed student for challenging elective courses and field trip participation?

HELD: For the District

34 C.F.R. § 300.114.

5. Whether the District: a) provided appropriately certified special education and regular education teachers for the Student's core curriculum classes; and, b) trained the Student's regular education teachers in a timely manner?

HELD: For the District

34 C.F.R. §§ 300.18, 300.156, and 300.323(d).

6. Whether the District provided a free appropriate public education for the Student?

HELD: For the District

34 C.F.R. §§ 300.320, 300.324(a-b), and 300.513(a).

***Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997);**

***Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003).**