

DOCKET NO. 101-SE-0117

STUDENT B/N/F PARENT AND PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
COPPERAS COVE INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS
	§	
	§	

DECISION OF HEARING OFFICER

*** (Student) by next friends *** and *** (Parents) (collectively, Petitioner) requested an impartial due process hearing (Complaint) pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* The Copperas Cove Independent School District (Respondent or the District) is the respondent to the Complaint. Petitioner alleges the District denied Student a free appropriate public education (FAPE) by violating its Child Find duty; failing to comply with the IDEA’s procedural requirements; conducting an inappropriate Full Individual Evaluation (FIE) of Student; and developing an Individualized Education Program (IEP) for Student that does not meet Student’s unique educational needs. The District denies Petitioner’s claims.

In a counterclaim, the District seeks to establish that the FIE is appropriate and, that while Petitioner may obtain an Independent Educational Evaluation (IEE) at personal expense, the District need not provide Petitioner’s requested IEEs at public expense.

The hearing officer finds Petitioner did not prove the District violated the IDEA as alleged. The hearing officer further finds the District’s FIE is appropriate. Therefore, Petitioner’s requested relief is denied.

I. PROCEDURAL HISTORY AND STATUTE OF LIMITATIONS

A. Procedural History

Petitioner filed the Complaint with the Texas Education Agency (TEA) on January 13, 2017. TEA issued its Notice of Filing of Request for Special Education Due Process Hearing on January 17, 2017. The parties did not reach an agreement at the January 31, 2017 resolution session. On February 14, 2017, the District filed a counterclaim to defend its November 2016 FIE. Respondent's Motion for Continuance and extension of the decision due date was granted, for good cause, on February 16, 2017.

Upon the parties' request, TEA assigned a mediator to the case on April 11, 2017. On April 18, 2017, the due process hearing was continued and the decision due date was extended for good cause to give the parties time to complete mediation. However, the mediation was not held because the parties could not arrive at a mutually agreeable date.¹

The hearing was held May 30-31, 2017, before Sharon Cloninger, hearing officer, in the District's administration building at 705 West Avenue D, Copperas Cove, Texas. Petitioner was represented by lead attorney Elizabeth Angelone and co-counsel Devin Fletcher. The District was represented by Eric G. Rodriguez, attorney. The District's party representative was ***, Director of Special Education. The hearing was open to the public.

The record closed June 23, 2017, after the parties submitted written closing briefs. This decision was timely issued by the July 1, 2017 due date.

¹ Tr. at 631.

B. Statute of Limitations

The District asserted the affirmative defense of the one-year statute of limitations. Petitioner raised no exemption.² The accrual date for this proceeding is January 17, 2016.

II. PARTIES' ISSUES, REQUESTED RELIEF, AND BURDEN OF PROOF**A. Petitioner's Issues**

1. Did the District fail to provide Student with an appropriate IEP that permitted Student to receive meaningful benefit, rather than *de minimus* or trivial educational advancement?
2. Did the District fail to provide a comprehensive and proper evaluation of Student when requested by Parents?
3. Did the District fail to evaluate Student in all areas of suspected disability, including in the areas of ***, ***, ***, ***, and ***?
4. Did the District fail to provide services to Student for *** and/or *** disability?
5. Did the District fail to track Student's progress toward Student's goals during the 2015-2016 school year and/or did the District fail to provide Parents with progress reports?
6. Did the District fail, and is it continuing to fail, to comply with all procedural requirements of the IDEA and Texas law, including providing Prior Written Notice, and by doing so has the District impeded Student's right to a FAPE; significantly impeded Parents' opportunity to meaningfully participate in the decision-making process regarding the provision of a FAPE; and/or impeded or caused a deprivation of educational benefit to Student?
7. Did the District fail to provide Extended School Year (ESY) services?
8. Did the District fail to provide Student with instruction and strategies based on peer-reviewed, research-based educational programming practices designed to meet Student's individual needs?

² 19 Tex. Admin. Code § 89.1151.

B. Petitioner's Requested Relief

By way of relief, Petitioner requests the hearing officer to:

1. Find that Student remains eligible for special education services as a student with a Specific Learning Disability (SLD);
2. Order the District to provide reimbursement to Parents for the privately-funded January ***, 2017 IEE;
3. Order the District to pay for IEEs in *** and *** (***)
4. Order the District to provide an IEP to include appropriate placement and services;
5. Order the District to provide compensatory services in an amount equal to the deprivation suffered by Student, including but not limited to *** services by a *** (***) and any *** services Student is entitled to; and
6. Order all other relief that may be appropriate.

C. Respondent's Counterclaim and Requested Relief

Respondent seeks to prove the District's November 2016 FIE of Student is appropriate. Respondent requests a finding that the FIE is appropriate and that Petitioner is not entitled to the requested IEEs at District expense.

D. Burden of Proof

The IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.³ A party attacking the appropriateness of an IEP established by a school district bears the burden of proof, by a preponderance of the evidence, to show why the IEP and resulting placement

³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d. 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

were inappropriate under the IDEA.⁴ To prevail, Petitioner must, therefore, establish that the District violated the IDEA regarding Petitioner's delineated issues.

Regarding the counterclaim, the District bears the burden to prove that Student's FIE was appropriate.⁵ To prevail, the District must prove the FIE meets all standards under the IDEA.⁶

III. WITNESSES

A. Petitioner's Experts

1. Licensed Psychological Associate, Ph.D., *** (***)⁷
2. *** (***)⁸
3. *** (***), ***⁹

B. Respondent's Experts

1. ***, ***, *** (***)¹⁰
2. Educational Diagnostician (EDDIAG)¹¹

C. Lay Witnesses

⁴ *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000); *R.H. v. Plano Ind. Sch. Dist.*, 607 F.3d 1003, 1010-1011 (5th Cir. 2010).

⁵ 34 C.F.R. § 300.502(b)(2)(i).

⁶ 34 C.F.R. §§ 300.301, 300.303 - 300.311.

⁷ Tr. at 487-490 (credentials); Tr. at 492 (designation as expert); Pet. Ex. 37 (*curriculum vitae*).

⁸ Tr. at 376-378 (credentials); Pet. Ex. 49 (*curriculum vitae*); Tr. at 379 (designation as expert).

⁹ Tr. at 262-266, 268 (credentials); Pet. Ex. 123 (*curriculum vitae*). A *** reviews data and develops individual treatment plans for children with ***. Tr. at 310 (Petitioner's expert ***).

¹⁰ Tr. at 322, 335-340 (credentials); Pet. Ex. 9a at 13; Resp. Ex. 84 (*curriculum vitae*); Tr. at 353 (designation as expert).

¹¹ Tr. at 409-411, 432-436 (credentials); Tr. at 474 (designated as expert); Pet. Ex. 9a at 13, 15; Resp. Ex. 83 (*curriculum vitae*).

1. Director of Education, ***¹²
2. District's Director of Special Education¹³
3. Principal, Ed.D., Student's *** school¹⁴
4. Student's ***¹⁵
5. Student's ***-grade *** teacher¹⁶

IV. FINDINGS OF FACT

A. Background

1. Student resides with Parents within the boundaries of the District, where Student entered school as a *** grader in August 2015.¹⁷ Student, age ***, will attend *** grade in 2017-2018.¹⁸
2. In November 2014, when Student attended ***, Student received special education services for *** (***) due to *** that were not developmentally appropriate and caused Student frustration with academic tasks.¹⁹ Student's IEP goal was to *** with 75% accuracy.²⁰
3. In September 2015, the District accepted Student's transfer IEP and began providing *** to Student.²¹
4. On February ***, 2017, the Admission, Review, and Dismissal committee (ARDC) determined that Student is no longer eligible for special education services as a student with ***. But because the Complaint was filed in January 2017, Student has continued to receive special education services due to the IDEA's "stay put" provision.²²

¹² Tr. at 595, 604-605 (credentials).

¹³ Tr. at 50 (credentials).

¹⁴ Tr. at 113 (credentials).

¹⁵ Tr. at 157-159, 161-162 (credentials).

¹⁶ Tr. at 199-200, 256-257 (credentials).

¹⁷ Pet. Ex. 3 at 1, 12-13, 15; Pet. Ex. 14 at 4; Pet. Ex. 36 at 1; Resp. Ex. 30 at 30-31; Resp. Ex. 85 at 1-21, 24-27.

¹⁸ Pet. Ex. 3 at 1.

¹⁹ Pet. Ex. 1 at 1, 11; Pet. Ex. 2 at 1, 7; Pet. Ex. 20; Pet. Ex. 21; Pet. Ex. 22; Pet. Ex. 48 at 1-2; Pet. Ex. 104; Pet. Ex. 105; Resp. Ex. 1; Resp. Ex. 29 at 1.

²⁰ Pet. Ex. 1 at 3, 6; Pet. Ex. 2 at 3, 6; Pet. Ex. 48 at 1-2; Resp. Ex. 29 at 3, 6.

²¹ Resp. Ex. 73 at 1.

²² 34 C.F.R. § 300.518; Pet. Ex. 11 at 6; Resp. Ex. 36 at 14.

5. Student began receiving intensive individualized Response to Intervention (RtI) services for *** in May 2016.²³
6. ***. Symptoms can include ***. Student has ***. Student *** below grade level.²⁴
7. On September ***, 2015, the District sent Parents notice of an ARDC meeting to consider Student's transfer IEP and conduct an annual review. The ARDC meeting was rescheduled twice by the District and once at Parents' request, finally being held on October ***, 2015.²⁵
8. Mother attended the October ***, 2015 ARDC meeting, participated, and was given an Explanation of Procedural Safeguards and Prior Written Notice.²⁶
 - a. The ARDC accepted the prior school's November ***, 2014 FIE and determined Student met criteria for *** and needed special education and related services.²⁷
 - b. The ARDC determined Student qualified for *** in the area of ***.²⁸
 - c. The ARDC developed an IEP for Student with a *** goal and two objectives to be completed by October ***, 2016. The goal required Student, while in a small group, and given a verbal/visual stimulus, to maintain Student's *** with 90% accuracy. The objectives required Student to *** with 80% accuracy within 12-18 weeks and with 90% accuracy within 18-36 weeks.²⁹
 - d. Student was to receive *** in 30-minute sessions once a week in a small group or individual setting with trained, licensed, or certified staff in a less distracting environment than the general education classroom. Once Student demonstrated mastery of Student's goal, the *** was to observe Student in a more natural and functional setting, with follow-up in the *** room for skills that Student might not be generalizing.
 - e. In all classes, Student's modification or accommodation was ***.³⁰

²³ Tr. at 130-131 (Principal); Pet. Ex. 36 at 1-2; Resp. Ex. 77.

²⁴ Tr. at 163, 166 (***) ; Tr. at 206 (*** teacher); Tr. at 275-277 (Petitioner's expert ***); Pet. Ex. 123 at 4-5; Pet. Ex. 75 at 2; Resp. Ex. 3 at 2; Resp. Ex. 5; Resp. Ex. 6; Resp. Ex. 7; Resp. Ex. 8; Resp. Ex. 9; Resp. Ex. 10; *see also* Pet. Ex. 78.

²⁵ Pet. Ex. 14 at 4; Pet. Ex. 106; Pet. Ex. 107; Pet. Ex. 108; Pet. Ex. 109; Resp. Ex. 30 at 4-5, 7-18.

²⁶ Pet. Ex. 3 at 12, 14-16; Pet. Ex. 109; Resp. Ex. 26 at 4, 19-36; Resp. Ex. 30 at 5, 30, 32-34.

²⁷ Pet. Ex. 3 at 1, 12; Resp. Ex. 30 at 19, 21, 30.

²⁸ Pet. Ex. 3 at 3; Resp. Ex. 30 at 21; *see also* Resp. Ex. 37, Resp. Ex. 38.

²⁹ Pet. Ex. 3 at 4; Resp. Ex. 30 at 22, 30.

³⁰ Pet. Ex. 3 at 5; Resp. Ex. 30 at 23.

- f. Student was to receive all instruction with Tier 1 core RtI in the general education classroom at Student's home campus.³¹
 - g. ESY services were not recommended either by Parents or the District because Student exhibited no documented regression.³²
 - h. Student's *** screening indicated Student did not need *** or services to make adequate progress because the *** provided in the classroom were sufficient to meet Student's needs.³³
9. On November ***, 2015, Student was moved to Tier 2 RtI for ***.³⁴

B. * Grade (Spring 2016)**

10. On March ***, 2016, Student was trying to ***. Student's teacher moved Student from ***.³⁵
11. On April ***, 2016, the District sent Parents notice of the ARDC meeting to be held on April ***, 2016.³⁶
12. The ARDC met on April ***, 2016, for Student's annual review and, pursuant to Parent's request, to meet with an associate of the *** (***), where Student had been receiving instruction.³⁷
- a. Mother participated in the deliberations and was provided with Prior Written Notice and a Notice of Procedural Safeguards, including information about the right to request an evaluation of Student.³⁸

³¹ Pet. Ex. 3 at 7, 11; Resp. Ex. 30 at 25, 29.

³² Pet. Ex. 3 at 10, 12-13, 15; Resp. Ex. 30 at 28, 30.

³³ Pet. Ex. 3 at 13, 15; Pet. Ex. 24; Resp. Ex. 4 at 20; Resp. Ex. 30 at 30, 35-36.

³⁴ The ***'s report incorrectly states Student began receiving Tier 2 *** support on November ***, 2016. Pet. Ex. 36 at 2. The correct date is November ***, 2015. Tr. at 547, 549-550 (Petitioner's expert ***); Pet. Ex. 9a at 9; Resp. Ex. 4 at 17.

³⁵ Pet. Ex. 83.

³⁶ Pet. Ex. 110; Resp. Ex. 33 at 4-7.

³⁷ Pet. Ex. 4 (generally); Pet. Ex. 4 at 17; *see also* Pet. Ex. 36 at 1; Resp. Ex. 33.

³⁸ Pet. Ex. 4 at 1, 14-15, 17-18; Resp. Ex. 33 at 8, 21, 23-25, 29.

- b. The ARDC reviewed information from school personnel, Student's communication needs, Parents' concerns for enhancing Student's education, and Student's progress on Student's IEP goal.³⁹
- i. Student's progress was sufficient for Student to master the IEP goal by the next annual ARDC meeting date, October ***, 2016. Student had mastered all of Student's ***, which Student demonstrated with 77% accuracy.⁴⁰
- ii. *** had improved since February ***, 2016, when Student *** with 56% accuracy. The goal required Student, while in a small group, to maintain Student's *** with 90% accuracy.⁴¹
- c. Student's Present Levels of Academic Achievement and Functional Performance (PLAAFP) statements were presented by Student's general education teacher, ***, and ***.
- i. The PLAAFP statement for *** indicated Student was able to *** with 85% accuracy but that Student needed to continue to work on ***.⁴²
- ii. The PLAAFP statements showed Student used age-appropriate language, was working at a beginning of *** grade level in ***, and was receiving Tier 2 RtI in ***. Student was passing Student's classes.⁴³
- iii. The PLAAFP statements contained enough detail for the ARDC to develop an appropriate IEP for Student.⁴⁴
- d. The ARDC revised Student's IEP goal. The new *** goal required Student, while in a small group, and given verbal/visual stimulus, to improve Student's *** with 85% accuracy. The objectives focused on Student's ability to ***. The goal was to be completed by April ***, 2017.⁴⁵
- e. *** was to be provided in 30-minute sessions five times per *** weeks' grading period.⁴⁶

³⁹ Pet. Ex. 4 at 1-2; Resp. Ex. 33 at 8.

⁴⁰ Tr. at 327-328, 355-358 (District's expert ***); Resp. Ex. 73 at 2-3, 6.

⁴¹ Tr. at 327-328, 355-358 (District's expert ***); Resp. Ex. 73 at 2-3, 6.

⁴² Pet. Ex. 4 at 2; Resp. Ex. 33 at 9.

⁴³ Pet. Ex. 4 at 2-3, 14; Resp. Ex. 33 at 9-10, 21.

⁴⁴ Pet. Ex. 4 at 2-3, 14; Resp. Ex. 33 at 9-10, 21.

⁴⁵ Pet. Ex. 4 at 5, 9; Resp. Ex. 33 at 12.

⁴⁶ Tr. at 608, 622 (District's expert ***); Pet. Ex. 4 at 11; Resp. Ex. 31 at 3; Resp. Ex. 32; Resp. Ex. 33 at 2, 18; Resp. Ex. 73.

- f. The ARDC decided Student did not need a behavior intervention plan or ***.⁴⁷
- g. ESY services were discussed and not recommended either by Parent or the District.⁴⁸ Student had been receiving instruction at *** and would continue going to *** over the summer.⁴⁹
- h. An Intensive Program of Instruction (IPI) and Accelerated Instruction Plan (AIP) were to be provided as needed. An IPI is developed when a student is not making progress toward IEP goals.⁵⁰
13. On April ***, 2016, Student's *** provided Student's general education teacher and the *** with copies of Student's accommodations and modifications, IEP goal and objectives, schedule of services, and State/District testing instructional supports as determined at the April ***, 2016 ARDC meeting.⁵¹
14. On April ***, 2016, Mother requested via email that the District evaluate Student for an SLD. The *** school Principal responded via email that same day, informing her Student would continue to receive *** RtI in *** block period ***, and the following accommodations would continue to be provided by Student's general education classroom teacher: extra time, ***, ***, reminders to stay on task, ***, and *** except for the *** test.⁵²
15. The District had 15 school days, or until May ***, 2016, to respond to Mother's request for an evaluation and was required to provide her with Prior Written Notice and Notice of Procedural Safeguards if the evaluation request was refused.⁵³
16. On April ***, 2016, school staff met to consider Mother's request for an SLD evaluation. In attendance were the counselor, Student's *** grade teacher, the *** school principal, Student's ***, a ***, and Student's ***. The members agreed that Student did not need to be tested because Student had made progress all year. At the beginning of *** grade, Student *** level. By the meeting date, Student was *** level. Student was progressing

⁴⁷ Pet. Ex. 4 at 6, 13-14; Resp. Ex. 33 at 10-11, 13, 15, 20.

⁴⁸ Pet. Ex. 4 at 11, 13; Resp. Ex. 31 at 3; Resp. Ex. 32; Resp. Ex. 33 at 2, 18, 20.

⁴⁹ Pet. Ex. 4 at 14; Resp. Ex. 33 at 21.

⁵⁰ Tr. at 151 (Principal); Pet. Ex. 4 at 11; Pet. Ex. 41 at 27-28; Resp. Ex. 31 at 3; Resp. Ex. 32; Resp. Ex. 33 at 2, 18. A May ***, 2016 IEP amendment added IPI and AIP to the schedule page of the April ***, 2016 ARDC document, correcting a clerical error. Pet. Ex. 5; Resp. Ex. 31; Resp. Ex. 32; *see* Pet. Ex. 6 at 4 for version with clerical error; *see also* Pet. Ex. 6, Pet. Ex. 15.

⁵¹ Resp. Ex. 28 at 3.

⁵² Tr. at 85-86 (District's Special Ed. Director); Tr. at 209-210 (***, teacher); Tr. at 628 (District's expert ***); Pet. Ex. 84; Pet. Ex. 85; Resp. Ex. 39.

⁵³ Tr. at 51-52, 85-86 (District's Special Ed. Director); Resp. Ex. 39; 19 Tex. Admin. Code § 89.1011(b). The Notice of Action comports with the IDEA's Prior Written Notice Requirements. 34 C.F.R. § 300.503.

- toward expectation in ***. Student was at ***** grade level in ***. Student was passing all classes.⁵⁴
17. On April ***, 2016, the District timely sent Parents a Notice of Action that Student would not be tested for an SLD. On May ***, 2016, the District provided Mother with a Notice of Procedural Safeguards. Mother signed the Notice of Action on May ***, 2016.⁵⁵
 18. On April ***, 2016, the District sent Mother a Notice of Action informing her that Student would be tested for ***. The Notice of Action states the District would continue to provide Student with Student's current IEP and Tier 2A *** RtI. The District declined to honor Mother's request to move Student up to Tier 2B *** RtI because Student was making progress under Tier 2A. On May ***, 2016, Mother consented to the ***.⁵⁶
 19. On April ***, 2016, Parent met with the Director of Special Education to request SLD testing in addition to *** testing. But data only supported ***, which is not an evaluation specific to special education. On May ***, 2016, Mother signed the District's second Notice of Action declining to test Student for an SLD. She had been provided with a Notice of Procedural Safeguards on May ***, 2016.⁵⁷
 20. On April ***, 2016, the District sent Parents notice of an ARDC meeting to be held on May ***, 2016, to discuss Parents' request that Student be tested for an SLD.⁵⁸ The ARDC did not meet until May ***, 2016.⁵⁹
 21. On May ***, 2016, the District sent Parents a Notice of Proposal to Evaluate Including Determination of Needed Evaluation Data. The ARDC's special request was in response to Parents' request that Student be evaluated for *** and ***. The District provided Mother with a Notice of Procedural Safeguards on that date.⁶⁰
 22. On May ***, 2016, Mother signed permission for the District to screen Student for ***, ***. Children with *** may suffer from a ***, among other things. *** can coexist with learning difficulties, but some individuals may have been mislabeled as having *** and/or *** disabilities.⁶¹

⁵⁴ Pet. Ex. 111.

⁵⁵ Tr. at 86-88, 94 (District's Special Ed. Director); Pet. Ex. 113; Resp. Ex. 23; Resp. Ex. 39.

⁵⁶ Tr. at 88-90 (District's Special Ed. Director); Pet. Ex. 29; Resp. Ex. 24.

⁵⁷ Tr. at 97-99 (District's Special Ed. Director); Resp. Ex. 24.

⁵⁸ Pet. Ex. 112.

⁵⁹ Pet. Ex. 8; Resp. Ex. 34.

⁶⁰ Tr. at 111 (District's Special Ed. Director); Pet. Ex. 28; Resp. Ex. 2 at 3-6; Resp. Ex. 24 at 1; Resp. Ex. 26 at 3.

⁶¹ Pet. Ex. 27; Pet. Ex. 28; Resp. Ex. 2 at 8.

23. On May ***, 2016, Student's physician determined it was not likely that Student has Attention Deficit-Hyperactivity Disorder (ADHD). The doctor recommended that Student be assessed for an SLD, specifically ***.⁶²
24. On May ***, 2016, the District's Deputy Superintendent for Curriculum and Instruction suggested to Mother that her requested special education evaluations should not be considered until after Student's *** testing results were obtained.⁶³
25. The District's May ***, 2016 *** assessment of Student showed Student exhibits the tendencies of a student with ***.⁶⁴
- Student scored below average in all areas excluding ***. Student had a difficult time ***. Coexisting complications included attention, while ***, behavior, and emotions were rated as average, and *** was rated as an asset.⁶⁵
 - Student's *** and *** were above grade level, and Student's *** was not up to grade level.⁶⁶
 - Student has deficits in *** and ***, and difficulty with ***. ***. ***. ***.⁶⁷
26. On May ***, 2016, in response to the District's Notice of Proposal to Evaluate, Mother signed consent for an FIE and received a Notice of Procedural Safeguards.⁶⁸
27. The *** (***) was administered to Student on May ***, 2016. The test was discontinued due to Student's inattention, lack of focus, and inability to follow directions.⁶⁹
28. On May ***, 2016, the District sent Parents notice of a May ***, 2016 ARDC meeting. One of the purposes of the meeting was to discuss the results of Student's *** assessment.⁷⁰
29. The ARDC met on May ***, 2016, to conduct a Revision to Annual ARD dated April ***, 2016, and to review Student's completed *** assessment.⁷¹

⁶² Tr. at 53-54 (District's Special Ed. Director); Pet Ex. 72; Pet. Ex. 88; Resp. Ex. 36 at 12.

⁶³ Tr. at 55 (District's Special Ed. Director); Pet. Ex. 88.

⁶⁴ Pet. Ex. 75 at 2; Resp. Ex. 3 at 2; Resp. Ex. 5; Resp. Ex. 6; Resp. Ex. 7; Resp. Ex. 8; Resp. Ex. 9; Resp. Ex. 10; *see* Pet. Ex. 78.

⁶⁵ Pet. Ex. 74; Resp. Ex. 2 at 1-3; Resp. Ex. 4 at 16.

⁶⁶ Tr. at 207-208 (***) teacher).

⁶⁷ Tr. at 268-269 (Petitioner's expert ***); Tr. at 182 (***) ; Tr. at 505-506 (Petitioner's expert ***); Pet. Ex. 74.

⁶⁸ Tr. at 111 (District's Special Ed. Director); Pet. Ex. 30; Resp. Ex. 2 at 7; Resp. Ex. 26 at 2.

⁶⁹ Resp. Ex. 11.

⁷⁰ Pet. Ex. 114.

⁷¹ Tr. at 127-128, 145 (Principal); Pet. Ex. 8 at 1; Pet. Ex. 89; Resp. Ex. 34 at 1.

- a. Mother participated in the deliberations and was provided with adequate Prior Written Notice and a Notice of Procedural Safeguards.⁷²
 - b. All ARDC members agreed that Student would receive *** services *** in the general education setting from May ***, 2016, through May ***, 2017. No amount of time was specified for the *** services.⁷³
 - c. The ARDC agreed that, in core subjects, Student would be given extra time to complete assignments; have an opportunity to ***, ***, receive reminders to stay on task; ***, ***.⁷⁴
 - d. Student was ***, up 97% from *** when Student began *** grade.⁷⁵
 - e. ESY services were discussed and not recommended either by Parent or the District.⁷⁶
 - f. Mother opted to take 5 days to review the ARDC documentation. Although she agreed with the *** evaluation and ARDC's proposed services, she stated she disagreed with the FIE and requested an IEE, without specifying in what area.⁷⁷
30. On June ***, 2016, Student finished *** grade, meeting State standards in all subjects except for *** and ***, in which Student was making progress towards *** grade standards.⁷⁸
- a. The District's *** level expectations for *** graders was *** at the beginning of the year; *** in the middle of the year; and *** at the end of the year.⁷⁹
 - b. Student began *** grade at *** and moved to *** in September 2016 and to *** on January ***, 2016, *** with 99% accuracy at ***. Student continued to *** into April. By May ***, 2016, Student could read at *** with 95% accuracy and *** and at *** with 80% accuracy and ***.⁸⁰

⁷² Tr. at 145-146, 149 (Principal); Pet. Ex. 8 at 2, 5, 7-8; Resp. Ex. 34 at 1-2, 5, 7-8.

⁷³ Tr. at 146-147, 151 (Principal; partly correcting date in Pet. Ex. 8 at 5); Tr. at 627 (District's expert ***); Pet. Ex. 8 at 2, 5; Resp. Ex. 34 at 1-2, 5.

⁷⁴ Pet. Ex. 8 at 3-4; Resp. Ex. 34 at 2-4.

⁷⁵ Tr. at 130 (Principal); Tr. at 260 (*** teacher); Pet. Ex. 8 at 4; Resp. Ex. 34 at 4.

⁷⁶ Pet. Ex. 8 at 5; Pet. Ex. 15a; Resp. Ex. 34 at 5.

⁷⁷ Pet. Ex. 8 at 2, 9; Resp. Ex. 34 at 2, 8.

⁷⁸ Resp. Ex. 85 at 22-23.

⁷⁹ Resp. Ex. 72 at 2.

⁸⁰ Resp. Ex. 72 at 2; Pet. Ex. 9a at 9; Pet. Ex. 41 at 5-14, 17-19, 23-24; Resp. Ex. 59; Resp. Ex. 60 at 2; Resp. Ex. 62; Resp. Ex. 64 at 1, 21, 29; Resp. Ex. 70 at 13-30; Resp. Ex. 72 at 2.

- c. Student scored “1” out of a possible “3” on *** at both *** and ***, ***, ***; ***, ***.⁸¹
31. On June ***, 2016, the Director of Special Education recommended to the *** school principal and other District staff that Student attend ***.⁸² Student attended the ***.⁸³
- C. *** Grade (2016-2017)**
32. In August 2016, Student’s *** provided Student’s general education teachers with hard copies of Student’s accommodations and modifications, IEP goal and objectives, schedule of services, and State/District testing instructional supports as determined at the May ***, 2016 ARDC meeting.⁸⁴ Student’s general education teachers received *** training from the District’s ***.⁸⁵
33. On August ***, 2016, the District sent Parents an invitation to an ARDC meeting to obtain consent for additional testing of Student in all areas of suspected disabilities and to reevaluate Student for ***. The ARDC met on September ***, 2016. Mother attended, participated in the deliberations, and received Prior Written Notice and a Notice of Procedural Safeguards.⁸⁶
34. On September ***, 2016, Student’s teacher provided Parents with information regarding Student’s progress. Student had poor progress in acquiring *** skills and producing ***. In relation to other students Student’s age, Student was in the average range for ***, ***, and was in the average or above average range for ***. Student was *****, and Student’s *** was above average. Student was in the average range for behavioral performance. To be successful in the educational setting, Student needed ***, which Student was receiving, and ***.⁸⁷ Student also needed extra time to complete assignments and assessments.⁸⁸
35. The ARDC reconvened on September ***, 2016, to conduct a Review of Existing Evaluation Data (REED).⁸⁹ Mother attended and participated.⁹⁰ The ARDC determined

⁸¹ Pet. Ex. 9a at 9; Pet. Ex. 41 at 5-14, 17-19, 23-24, 29-34; Resp. Ex. 59; Resp. Ex. 60 at 2; Resp. Ex. 62; Resp. Ex. 64 at 1, 21, 29; Resp. Ex. 70 at 13-30.

⁸² Pet. Ex. 90; *see also* Tr. at 61-62 (District’s Special Ed. Director); Pet. Ex. 17; Pet. Ex. 18; Resp. Ex. 34 at 2; Resp. Ex. 42; Resp. Ex. 65; Resp. Ex. 66.

⁸³ Tr. at 100 (District’s Special Ed. Director).

⁸⁴ Resp. Ex. 28 at 1-2.

⁸⁵ Tr. at 129 (Principal); Resp. Ex. 34 at 2.

⁸⁶ Tr. at 613 (District’s expert ***); Pet. Ex. 9 at 1-5; Pet. Ex. 115; Resp. Ex. 26 at 1; Resp. Ex. 35 at 1-5, 7-8.

⁸⁷ Tr. at 252-253 (*** teacher); Pet. Ex. 100; Resp. Ex. 4 at 58-60.

⁸⁸ Tr. at 243, 248-249 (*** teacher).

⁸⁹ Tr. at 613-614 (District’s expert ***); Pet. Ex. 9a; Resp. Ex. 3; Resp. Ex. 4 at 9-22, 41-49.

⁹⁰ Pet. Ex. 9 at 2, 4-5; Pet. Ex. 31 at 1, 8; Resp. Ex. 3 at 1; Resp. Ex. 4 at 9, 41, 48-49.

that a reevaluation in the area of *** was necessary.⁹¹ Further, Student's achievement skills and abilities were to be evaluated by using formal measures.⁹² The ARDC also decided Student's intellectual functioning would be evaluated using formal measures that indicate cognitive processing abilities while informal measures such as Parent information would be used to evaluate adaptive behavior.⁹³ The evaluations were to be completed by November ***, 2016.⁹⁴

- a. The ARDC reviewed information from teachers and Parents, progress monitoring data and benchmark testing results; the *** assessment and related services' assessments; formal evaluations completed in previous years; school health screening; and school records, including grades, discipline reports, attendance, and State assessment tests.
- b. Student demonstrated average *** and adequate *** for Student's age and grade level.
- c. Student's vision and hearing screening conducted on September ***, 2016, showed Student's vision is within normal limits without correction and Student's hearing is within normal limits unaided.⁹⁵ ***.⁹⁶ Student's *** could have been impacted if ***.⁹⁷
- d. Mother provided the ARDC with written sociological and general background information, development/physical history, and behavioral/emotional issues information.⁹⁸
- e. The ARDC determined, based on Student's October ***, 2015 *** screening, that *** available to the general education population were sufficient to meet Student's needs.⁹⁹

⁹¹ Pet. Ex. 9a at 2-3, 5; Pet. Ex. 31 at 2; Resp. Ex. 3 at 2; Resp. Ex. 4 at 10-11, 42, 48.

⁹² Pet. Ex. 9a at 8-10; Pet. Ex. 31 at 5-7; Resp. Ex. 3 at 5-7; Resp. Ex. 4 at 16, 45-48.

⁹³ Tr. at 472-473 (District's expert ***); Pet. Ex. 9a at 5-6, 16; Pet. Ex. 31 at 5; Resp. Ex. 3 at 5, 8-9; Resp. Ex. 4 at 14, 45, 48.

⁹⁴ Tr. at 472-473 (District's expert EDDIAG); Pet. Ex. 9a at 6; Resp. Ex. 3 at 5, 8-9; Resp. Ex. 4 at 14, 45-48.

⁹⁵ Pet. Ex. 9a at 3-4, 16-17; Pet. Ex. 23; Pet. Ex. 31 at 3; Pet. Ex. 36 at 1; Pet. Ex. 48 at 1, 9; Resp. Ex. 3 at 3; Resp. Ex. 4 at 12, 43, 62-63.

⁹⁶ Pet. Ex. 36 at 1; Pet. Ex. 48 at 1; Resp. Ex. 4 at 12.

⁹⁷ Tr. at 390 (Petitioner's expert ***).

⁹⁸ Pet. Ex. 9a at 4-5; Pet. Ex. 31 at 4; Resp. Ex. 3 at 4; Resp. Ex. 4 at 12-13, 44, 50-53.

⁹⁹ Tr. at 132 (Principal); Pet. Ex. 9a at 12; Pet. Ex. 31 at 7; Resp. Ex. 3 at 7; Resp. Ex. 4 at 47.

36. On September ***, 2016, Parents consented to Student's FIE in the areas of communicative status, emotional/behavioral status, sociological status, intellectual/adaptive behavior, and academic performance.¹⁰⁰
37. Beginning September ***, 2016, Student participated in *** for 45 minutes during the RtI period.¹⁰¹ Student also attended 45-minute long, ***, specifically using ***.¹⁰²
- a. ***.¹⁰³
 - b. ***. ***.¹⁰⁴
 - c. *** is effective with a number of children with ***.¹⁰⁵
38. On October ***, 2016, the *** observed Student's *** in an indirect manner in the *** to evaluate Student's *** in generalized settings. All of Student's actual *** *** were direct services in accordance with Student's IEP.¹⁰⁶
39. In November 2016, Student scored 73% in *** and 53% in *** on the Texas Essential Knowledge and Skills (TEKS) test, meeting the standard in *** but not in ***.¹⁰⁷
40. From October ***, 2015, when Student was a *** grader, through November ***, 2016, when Student was a *** grader, Student attended *** sessions at ***.¹⁰⁸ ***'s director and Student's *** grade teacher—with Parents' permission—corresponded via email about Student's progress. They agreed as to which skills Student had mastered and which Student had not.¹⁰⁹ *** does not do *** testing or specialize in ***, although students with *** attend ***.¹¹⁰
- a. In ***, Student began the school year at the *** level and finished the school year at the *** level.
 - b. In ***, Student began at the *** level and ended at the *** level.

¹⁰⁰ Pet. Ex. 32 at 1-3, 5; Resp. Ex. 4 at 36-40; Resp. Ex. 25 at 1-5; *see* Resp. Ex. 42; Resp. Ex. 44; Resp. Ex. 45.

¹⁰¹ Tr. at 159-160, 161, 172, 182 (***) ; Pet. Ex. 9a at 9; Pet. Ex. 78a; Resp. Ex. 69.

¹⁰² Tr. at 174-175 (***) ; Tr. at 201-203 (***) teacher); Pet. Ex. 76.

¹⁰³ Tr. at 265, 299-300, 308 (Petitioner's expert ***) ; Pet. Ex. 78.

¹⁰⁴ Tr. at 159-160, 161, 172, 182 (***) ; Pet. Ex. 9a at 9; Pet. Ex. 78a; Resp. Ex. 69.

¹⁰⁵ Tr. at 273 (Petitioner's expert ***) .

¹⁰⁶ Tr. at 332-333, 341-342, 366, 623 (District's expert ***) ; Resp. Ex. 47.

¹⁰⁷ Pet. Ex. 16 at 1; Resp. Ex. 75; Resp. Ex. 76; Resp. Ex. 77; *see* Resp. Ex. 75 at 8; Resp. Ex. 78.

¹⁰⁸ Tr. at 596-598 (***) director); Pet. Ex. 79 at 1-2; Resp. Ex. 30 at 30.

¹⁰⁹ Tr. at 598-600, 602-603 (***) director).

¹¹⁰ Tr. at 599 (***) director).

- c. In ***, Student began at the *** level and ended at the *** level.¹¹¹
41. The *** sent IEP progress reports home with Student's report card every *** weeks during the 2016-2017 school year.¹¹² The *** goal required Student, while in a small group, and given verbal/visual stimulus, to improve Student's *** with 85% accuracy. The objectives focused on Student's ability to ***. The goal was to be completed by April ***, 2017.¹¹³
- a. Student's September ***, 2016 IEP Progress Report showed Student's progress was sufficient for Student to attain the *** goal by the next annual ARDC meeting date. Student was maintaining mastery of ***; exhibited 85% accuracy in ***; and showed 65% accuracy with ***.¹¹⁴
- b. Student's November ***, 2016 IEP Progress Report showed Student had reached a level of mastery with ***.¹¹⁵ Typically, in order for a child to have ***, Student would exhibit 85% to 90% mastery over consecutive ***, across activities, and across ***.¹¹⁶
- c. Student's December ***, 2016 IEP Progress Report recommended no further action to enable goal achievement.¹¹⁷
- d. Student's February ***, 2017 IEP Progress Report stated Student had reached a level of mastery with ***; was demonstrating ***; was using *** appropriately and accurately in ***; and Student's accuracy of *** was being maintained.¹¹⁸
- e. Student's April ***, 2017 IEP Progress Report showed Student had mastered Student's *** goal and objectives. The goal was to have been met by April ***, 2017.¹¹⁹
- f. The May ***, 2017 IEP Progress Report showed Student had maintained a level of mastery with *** and Student's ***.¹²⁰

¹¹¹ Tr. at 596-598 (***, director); Pet. Ex. 79 at 1-2; Resp. Ex. 30 at 30.

¹¹² Tr. at 359-360 (District's expert ***); Pet. Ex. 43; Pet. Ex. 45; Resp. Ex. 93.

¹¹³ Pet. Ex. 4 at 5, 9; Resp. Ex. 33 at 12.

¹¹⁴ Pet. Ex. 43.

¹¹⁵ Pet. Ex. 45.

¹¹⁶ Tr. at 387, 401-402 (Petitioner's expert ***).

¹¹⁷ Pet. Ex. 46.

¹¹⁸ Pet. Ex. 47.

¹¹⁹ Pet. Ex. 103a at 11.

¹²⁰ Tr. at 363-365, 367-369 (District's expert ***); Resp. Ex. 93.

42. The District completed Student's FIE on November ***, 2016.¹²¹ The multi-disciplinary team found Student no longer met eligibility for *** and did not meet eligibility criteria for an SLD.¹²²
- a. ***
- i. The *** is a reliable test accepted by members of the *** profession. The District's *** understood how to score the test and interpret the results.¹²³ To measure Student's growth since *** school identified Student as a child with ***, the District's *** assessed Student with the same test as was used in 2014.¹²⁴
- ii. On the ***, Student scored a ***, in the average standard range, with no initial or final errors, and medial error of ***. *** in ***** were consistent with those in ***. Data collected in the *** room showed Student had corrected Student's *** and was using *** with at least 80% accuracy. In the classroom, Student demonstrated the ability to ***.¹²⁵
- iii. The *** recommended that Student no longer receive *** services.¹²⁶
- b. Specific Learning Disability
- i. A local education agency is permitted to determine what model it will use to test for an SLD.¹²⁷ The District uses the pattern of strengths and weaknesses model as determined through cross-battery testing and information provided by the campus with regard to RtI components.¹²⁸
- ii. To be identified as a student with an SLD, a student must exhibit a pattern of strengths and weaknesses in performance, achievement, or both, relevant to age, grade-level standards, or intellectual development, as indicated by significant variance among specific areas of cognitive function, such as working memory and verbal comprehension, or between specific areas of

¹²¹ Pet. Ex. 9a at 6-8; Pet. Ex. 35; *see also* Resp. Ex. 50, Resp. Ex. 51.

¹²² Pet. Ex. 35 at 4; Pet. Ex. 38 at 3-4, 6.

¹²³ Tr. at 347 (District's expert ***); Resp. Ex. 4 at 10.

¹²⁴ Tr. at 371-372 (District's expert ***).

¹²⁵ Tr. at 324-326, 354-355 (District's expert ***); Pet. Ex. 9a at 3; Pet. Ex. 44 at 1; Resp. Ex. 15; *see* Resp. Ex. 4 at 2-3.

¹²⁶ Tr. at 324-326, 354-355 (District's expert ***); Pet. Ex. 9a at 3; Pet. Ex. 44 at 1; Resp. Ex. 15; *see* Resp. Ex. 4 at 2-3.

¹²⁷ 34 C.F.R. § 300.307; 19 Tex. Admin. Code § 89.1040(c)(9)(B)(ii)(II).

¹²⁸ Tr. at 109-110 (District's Special Ed. Director); Tr. at 426, 430 (District's expert EDDIAG).

cognitive function and academic achievement.¹²⁹ To have an SLD, one of the global cognitive abilities must be in the below average range.¹³⁰

- iii. The Educational Diagnostician contacted *** on October ***, 2016, and October ***, 2016, to find out what kind of testing they used.¹³¹ Prior to assessing Student, she reviewed Student's educational records including RtI information, classroom grades, and the May 2016 *** evaluation.¹³²
- iv. In evaluating Student, the Educational Diagnostician used her discretion, did not violate professional standards in her selection of subtests, and used current versions. She did not select tests outside of what is recommended by the Cross-Battery Assessment System (X-BASS).¹³³ The X-BASS and its recommended subtests are well researched.¹³⁴
- v. Student's SLD evaluation was completed on November ***, 2016.¹³⁵ Student did not exhibit a pattern of strengths and weaknesses.¹³⁶ All of Student's cognitive processing abilities, including short-term memory, are in the average range with no weaknesses in the cognitive processing areas.¹³⁷ Student's composite of cognitive strengths is ***.¹³⁸

c. Achievement Ability

- i. For the achievement portion of the X-BASS, select tests from the Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ-IV ACH), Woodcock-Johnson Tests of ***, Fourth Edition (WJ-IV ***), and Kaufman Tests of Achievement, Third Edition (KTEA-3) were administered. These test batteries are all individually administered clinical instruments designed to measure achievement ability in children and adults aged 2 through 80+ on the WJ-IV and ages 4-25 school children on the

¹²⁹ Tr. at 107-108 (District's Special Ed. Director); Tr. at 426-427 (District's expert EDDIAG); Pet. Ex. 35 at 2; Pet. Ex. 38 at 4.

¹³⁰ Tr. at 454 (District's expert EDDIAG); Pet. Ex. 33 at 1.

¹³¹ Pet. Ex. 14 at 1; Pet. Ex. 25.

¹³² Tr. at 476-477 (District's expert EDDIAG).

¹³³ Tr. at 445-448, 463, 481 (District's expert EDDIAG).

¹³⁴ Tr. at 465 (District's expert EDDIAG).

¹³⁵ Tr. at 456-457 (District's expert EDDIAG); Pet. Ex. 9a at 14-17; Pet. Ex. 35 at 2; Resp. Ex. 4 at 4-5, 18-20; Resp. Ex. 14 at 5-6, 7 (initial Score Report); Resp. Ex. 14 at 1-2, 3 (revised Score Report); Resp. Exs. 12, 13, 16, 17, 18, 19, 20, 21, 22 (protocols).

¹³⁶ Pet. Ex. 9a at 15, 17; Pet. Ex. 33 at 1; Pet. Ex. 34 at 9; Pet. Ex. 35 at 2; Pet. Ex. 38 at 4; Resp. Ex. 16 at 2; *see* Resp. Ex. 4 at 5.

¹³⁷ Pet. Ex. 9a at 6-8; Pet. Ex. 35 at 2; Pet. Ex. 38 at 4; Resp. Ex. 4 at 14-17.

¹³⁸ Resp. Ex. 4 at 14.

KTEA-3 with regard to reading, writing, mathematics, and oral expression and ***. Results of performance are expressed as Standard Scores (Mean of 100; Standard Deviation of 15). Standard Scores ranging from 90-110 on the WJ-IV ACH and 85-115 on the KTEA are considered to fall within the average range. The X-BASS considers the average range to be 90-110 with the normal range as 85-115.¹³⁹

- ii. All of Student's achievement scores were between the *** and *** grade levels, with the exception of ***, which was at the *** grade level.¹⁴⁰
- iii. Student has weaknesses in *** achievement that are attributable to Student's previously identified ***. Student's *** achievement score of 79 is in the well below average range, consistent with ***, which affects Student's *** and ***. The *** score indicates there has been some improvement since *** services began.¹⁴¹
- d. The multi-disciplinary team reported no concerns related to Student's behavior or attention, based on team members' observations and information provided by Student's teachers and Mother.¹⁴² Student's adaptive behavior is commensurate with Student's general intellectual ability.¹⁴³ Student's classroom behavior does not negatively impact Student's learning.¹⁴⁴
- e. The multi-disciplinary team was composed of qualified professionals, including Student's ***, an educational diagnostician, and Student's general education *** teacher.¹⁴⁵
- f. Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by Parent and teachers.¹⁴⁶

¹³⁹ Tr. at 413-414 (District's expert EDDIAG); Resp. Ex. 14 at 6-7 (initial Score Report); Resp. Ex. 14 at 2-4 (revised Score Report); Resp. Exs. 16-19 (KTEA-3); Resp. Ex. 20 (Tests of ***); Resp. Exs. 21-22 (W-J IV ACH).

¹⁴⁰ Tr. at 430-431 (District's expert EDDIAG); Resp. Ex. 16 at 2.

¹⁴¹ Tr. at 455-456 (District's expert EDDIAG); Pet. Ex. 9a at 15; Pet. Ex. 33 at 1; Pet. Ex. 34 at 8-9; Pet. Ex. 35 at 2; Pet. Ex. 38 at 4; Resp. Ex. 4 at 5; Resp. Ex. 12.

¹⁴² Tr. at 451-453, 466-469, 483-484 (District's expert EDDIAG); Resp. Ex. 4 at 5-6, 11-14, 16.

¹⁴³ Tr. at 348-349, 354 (District's expert ***); Pet. Ex. 9a at 8; Resp. Ex. 4 at 11, 16, 54-57.

¹⁴⁴ Pet. Ex. 35 at 2-3; *see* Pet. Ex. 36 at 2; *see also* Pet. Ex. 38 at 5.

¹⁴⁵ 34 C.F.R. § 300.304(c)(1)(iv); 19 Tex. Admin. Code § 89.1040(b); Pet. Ex. 35 at 1, 4; Resp. Ex. 4 at 2-3, 8-9, 22.

¹⁴⁶ 34 C.F.R. § 300.304(b); Pet. Ex. 35 at 5-12; Resp. Ex. 4 at 10, 12-14; Resp. Exs. 12-22.

- g. The multiple assessments are well-recognized tests specifically chosen by Student's evaluators to provide an accurate assessment of Student's strengths and weaknesses in all areas.¹⁴⁷
- h. The tests and other evaluation materials were administered by trained personnel in conformance with the instructions provided by their producers.¹⁴⁸
- i. Student was assessed in all areas of suspected disability and the FIE was sufficiently comprehensive to identify all of Student's educational and related services' needs, whether or not those services are commonly linked to the disability category in which Student has been classified.¹⁴⁹
- j. The FIE report did not contain recommendations for the ARDC to use in developing Student's IEP, because the multi-disciplinary team found Student should no longer receive services for *** and was not eligible to receive services as a student with an SLD.¹⁵⁰
43. On December ***, 2016, Mother sent an email to the *** school principal requesting IEEs in all areas of Student's suspected disability, including but not limited to "Achievement, Cognitive, *** [sic], ***, ***, and *** as soon as possible."¹⁵¹
44. On December ***, 2016, Mother informed the *** school principal that she was not available for the ARDC meeting set for December ***, 2016, to consider Student's FIE.¹⁵²
45. On December ***, 2016, the Director of Special Education emailed Mother, asking if the ARDC meeting could be rescheduled either to December ***, 2016, or December ***, 2016. She explained that the District's FIE was not final because it had not been considered by the ARDC. She stated that once the FIE was final, Parents could disagree with the results and request an IEE, after which the District would make its determination as to whether to grant or refuse the IEE request.¹⁵³
46. The District attempted to reschedule the ARDC meeting for five separate dates in December 2016 and January 2017 but Parents were unavailable on the proposed dates. On January ***, 2017, Parents proposed January ***, 2017 (***) and January ***, 2017 (staff conflict). The District was notified of Parents' Complaint on January ***, 2017. On

¹⁴⁷ 34 C.F.R. § 300.304(b), (c)(1)(iii); Tr. at 347 (District's expert ***); Tr. at 465 (District's expert EDDIAG).

¹⁴⁸ 34 C.F.R. § 300.304(c)(1)(iv); Tr. at 347 (District's expert ***); Tr. at 445-448, 463, 481 (District's expert EDDIAG).

¹⁴⁹ 34 C.F.R. § 300.304(c)(4), (c)(6); Resp. Ex. 4 at 36-40; Resp. Ex. 36 at 9-14.

¹⁵⁰ 34 C.F.R. § 300.304(b)(1); Pet. Ex. 35 at 4; Pet. Ex. 38 at 3-4, 6.

¹⁵¹ Tr. at 64 (District's Special Ed. Director); Pet. Ex. 92; Resp. Ex. 51.

¹⁵² Pet. Ex. 92; *see also* Resp. Ex. 50, Resp. Ex. 51, Resp. Ex. 53.

¹⁵³ Tr. at 65-68, 79-80 (District's Special Ed. Director); Pet. Ex. 93; Resp. Ex. 52.

February ***, 2017, the District sent Parents an ARDC meeting invitation for a meeting to be held on March ***, 2017, or March ***, 2017. Parents declined the ARDC meeting invitation on February ***, 2017.¹⁵⁴

47. On January ***, 2017, the District provided Parents with an invitation to a resolution meeting, a legal presentation resource letter, and a Notice of Procedural Safeguards.¹⁵⁵ The parties participated in a resolution session on January 31, 2017, but did not resolve their issues.¹⁵⁶
48. Respondent's February ***, 2017 counterclaim served as a denial of Mother's December ***, 2016 IEE request.¹⁵⁷
49. On February ***, 2017, the District invited Parents to an ARDC meeting to be held on either February ***, 2017, or February ***, 2017.¹⁵⁸
50. The ARDC met on February ***, 2017, to review Student's November ***, 2016 FIE. They determined Student no longer met criteria as a child with *** and did not meet eligibility as a child with an SLD.¹⁵⁹
 - a. Mother attended, participated, and was given Prior Written Notice and an Explanation of Procedural Safeguards.¹⁶⁰
 - b. Student had passing grades for ***, ranging from 82 to 94, and the ***, ranging from 80 to 95. In ***, Student was showing work, which was an improvement from ***.¹⁶¹ Student's *** grades for the ***—ranged from 81 to 83.¹⁶²
 - c. Student received appropriate accommodations throughout the school year.¹⁶³

¹⁵⁴ Pet. Ex. 117; Pet. Ex. 118 at 4; Resp. Ex. 36 at 1-4; Resp. Ex. 51; Resp. Ex. 52; Resp. Ex. 53; Resp. Ex. 54; Resp. Ex. 57.

¹⁵⁵ Resp. Ex. 55; Resp. Ex. 56.

¹⁵⁶ See SOAH Order No. 3, issued February 16, 2017.

¹⁵⁷ Tr. at 75-76, 82 (District's Special Ed. Director).

¹⁵⁸ Pet. Ex. 118; Resp. Ex. 36 at 5-8.

¹⁵⁹ Tr. at 614 (District's expert ***); Pet. Ex. 11 at 1; Pet. Ex. 38 at 1-2, 3-4, 6; Resp. Ex. 4 at 2, 5-8; Resp. Ex. 36 at 9, 11-12.

¹⁶⁰ Pet. Ex. 11 at 2, 4-6; Resp. Ex. 4 at 9, 21; Resp. Ex. 36 at 10-15.

¹⁶¹ Pet. Ex. 11 at 2; Pet. Ex. 19; Resp. Ex. 36 at 10.

¹⁶² Pet. Ex. 125. The check marks are for comments and accommodations which are not included with the exhibit. Tr. at 232-233 (***, teacher).

¹⁶³ Pet. Ex. 11 at 2; Resp. Ex. 36 at 10.

- d. Student progressed from *** to *** in ***. Student scored “excellent” in *** and needed to improve in ***.¹⁶⁴ The ARDC determined Student would continue to receive ***.¹⁶⁵ Student does not need IEP goals and objectives to target specific *** skills.¹⁶⁶
- e. The ARDC reviewed Student’s *** score, the same test given in 2014, for comparison purposes. The medial position *** error reported in the FIE had corrected itself.¹⁶⁷ As of December ***, 2016, Student demonstrated mastery of *** setting without ***.¹⁶⁸ Because Student had mastered all *** goals, including *** that remained when the FIE was conducted, the ARDC determined Student no longer needed ***.¹⁶⁹
- f. The District’s Educational Diagnostician summarized the *** evaluation. Student has no cognitive deficits. Student’s *** assessment score improved from 80 in May 2016 to 92 when the FIE was conducted. In everything except *** skills, Student scored in the normal range. The *** *** and *** scores match the deficit described in Student’s *** evaluation. The FIE shows Student does not meet criteria as a student with an SLD.¹⁷⁰
- g. The ARDC considered the January ***, 2017 IEE conducted by Petitioner’s expert ***.¹⁷¹ The *** evaluated Student in all areas of suspected disability.¹⁷² Overall, the ***’s test results are consistent with the FIE results except for the short-term memory cognitive score.¹⁷³
- i. The *** incorrectly concluded Student demonstrates a pattern of strengths and weaknesses, thus qualifying as a student with an SLD, due to a low short-term memory cognitive score obtained under the Cattell-Horn-Carroll (CHC) model (as opposed to the X-BASS), and an academic weakness in ***.¹⁷⁴ *** scores may be reported either in the cognitive domain (as in the

¹⁶⁴ Tr. at 254 (*** teacher); Pet. Ex. 11 at 2-3; Resp. Ex. 36 at 10-11.

¹⁶⁵ Pet. Ex. 11 at 6; Resp. Ex. 36 at 11, 14.

¹⁶⁶ Tr. at 245, 254-255 (*** teacher).

¹⁶⁷ Tr. at 324-326, 354-355 (District’s expert ***); Pet. Ex. 9a at 2-3; Pet. Ex. 11 at 3; Pet. Ex. 21 at 3; Resp. Ex. 3 at 2; Resp. Ex. 4 at 42; Resp. Ex. 15; Resp. Ex. 36 at 11.

¹⁶⁸ Tr. at 329-331 (District’s expert ***); Pet. Ex. 42; Resp. Ex. 74.

¹⁶⁹ Pet. Ex. 11 at 6; Resp. Ex. 36 at 11-12, 14.

¹⁷⁰ Tr. at 429, 444 (District’s expert EDDIAG); Pet. Ex. 11 at 3; Pet. Ex. 33; Resp. Ex. 4 at 23-35; Resp. Ex. 36 at 9, 11-12, 14.

¹⁷¹ Tr. at 434, 458-460 (District’s expert EDDIAG); Tr. at 108 (District’s Special Ed. Director).

¹⁷² Tr. at 557 (Petitioner’s expert ***).

¹⁷³ Tr. at 526-529, 560 (Petitioner’s expert ***); Pet. Ex. 36 at 9.

¹⁷⁴ Tr. at 535, 561-562, 566-567 (Petitioner’s expert ***); Pet. Ex. 36 at 11, 13-14.

FIE) or the academic domain (as in the IEE). Regardless, *** is not an area of SLD eligibility.¹⁷⁵

- ii. The Differential Ability Scales-II (DAS-II) test is 10 years old, which could affect the scores, and does not cover all of the cognitive areas covered by the X-BASS, including the cognitive area of ***.¹⁷⁶
 - iii. The Wechsler Individual Assessment Test-Third Edition (WIAT III) results were similar to the FIE results. Student's composite academic assessment score of *** is *** standard deviations below average, according to the publisher's statistics. Overall, Student's *** abilities are at the *** level and Student's *** and *** abilities are at the *** level.¹⁷⁷
 - iv. The Conners 3rd Edition (Conners 3) is a multi-informant social/emotional assessment. The scales indicated no concern about attention, comporting with the results of the May 2016 ADHD evaluation by Student's physician.¹⁷⁸
 - v. The *** used incomplete RtI data in determining Student was not making adequate progress. The *** recommended that an SLD eligibility be considered due to Student's lack of progress, but the District uses a pattern of strengths and weaknesses model to evaluate for an SLD.¹⁷⁹
51. On March ***, 2017, Mother notified the District via email that she disagreed with Student's IEP. She again requested IEEs in all areas of suspected disability, including ***.¹⁸⁰
52. In a March ***, 2017 letter to Parents, the Director of Special Education offered to reconvene the ARDC on March ***, 2017, to address Parents' disagreement with the IEP. Enclosed was information about requesting an IEE at public expense and notification that the REED was completed before Student's reevaluation due date of November ***, 2017. The Director of Special Education asked Parents to contact her regarding the offer from the District's attorney to Petitioner's attorney for an IEE in the area of ***. Other IEE requests were denied. Parents did not contact the Director of Special Education regarding the *** IEE.¹⁸¹

¹⁷⁵ 34 C.F.R. §§ 300.8(c)(10), .307-.311; 19 Tex. Admin. Code § 89.1040(c)(9); Tr. at 563-565 (Petitioner's expert ***).

¹⁷⁶ Tr. at 460-461, 479 (District's expert EDDIAG); Pet. Ex. 36 at 8-11.

¹⁷⁷ Tr. at 523-524, 573 (Petitioner's expert ***); Pet. Ex. 36 at 11-12.

¹⁷⁸ Tr. at 534 (Petitioner's expert ***); Pet. Ex. 36 at 12-14.

¹⁷⁹ Tr. at 511-512, 567 (Petitioner's expert ***); Pet. Ex. 36 at 2-3, 15-16; *see* Tr. at 109-110 (District's Special Ed. Director); Tr. at 426, 430 (District's expert EDDIAG).

¹⁸⁰ Tr. at 68-69 (District's Special Ed. Director); Pet. Ex. 95; Pet. Ex. 96.

¹⁸¹ Tr. at 76, 84-85, 104 (District's Special Ed. Director); Pet. Ex. 96 at 1-2; Resp. Ex. 58.

53. On March ***, 2017, the Director of Special Education provided Mother with the District's IEE guidelines and procedures, including an independent contractor list.¹⁸²
54. On March ***, 2017, Student scored 55% in *** on the TEKS test, failing to meet the 70% required for passing.¹⁸³
55. The March ***, 2017 *** IEE conducted by Petitioner's expert *** showed that Student continued to meet IDEA eligibility criteria as a student with *** in the area of *** and continued to demonstrate an educational need for ***. According to the IEE, Student exhibited a ***, diagnosed as ***. The *** has potential educational impact academically and socially. It could impact Student's *** and ***. Student's errors were noticeable in ***, which could draw negative attention from peers.¹⁸⁴
- a. Parents requested the IEE to determine if Student was ready to be dismissed from *** services. Mother continued to ***.¹⁸⁵
 - b. The *** is used for the identification, diagnosis, and follow-up evaluation of *** in children. Student exhibited average skills in the areas of ***. Student's *** and ability to *** were above-average when compared to same-age peers, and are a strength for Student.¹⁸⁶ In the context of ***, Student's short-term memory was average or above average.¹⁸⁷ The *** results were comparable to the 2014 *** results obtained by Student's *** school.¹⁸⁸
 - c. The *** is a standardized test that assesses ***. Overall, the evaluator observed Student to demonstrate difficulties ***." Results of the *** indicated that Student is ***, but has not yet mastered ***. Student had *** errors at the ***, resulting in a standard score of 78, and *** errors at the ***, with a standard score of 82. Student's errors were ***.¹⁸⁹ Mother is a *** who told the evaluator the *** were still present.¹⁹⁰

¹⁸² Tr. at 68-72, 74, 81-82 (District's Special Ed. Director); Pet. Ex. 96.; Resp. Ex. 58.

¹⁸³ Resp. Ex. 76 at 2.

¹⁸⁴ Tr. at 385 (Petitioner's expert ***); Pet. Ex. 48 at 1, 10, 12.

¹⁸⁵ Pet. Ex. 48 at 3.

¹⁸⁶ Tr. at 382, 384, 392, 394-398, 405 (Petitioner's expert ***); Pet. Ex. 48 at 3, 6.

¹⁸⁷ Tr. at 398 (Petitioner's expert ***).

¹⁸⁸ Tr. at 405-406 (Petitioner's expert ***).

¹⁸⁹ Tr. at 382, 384, 392, 398-400 (Petitioner's expert ***); Pet. Ex. 48 at 3, 7-8, 9.

¹⁹⁰ Tr. at 388 (Petitioner's expert ***).

- d. The *** evaluates the presence of ***. The overall severity of Student's *** falls in the very mild range. The evaluator did not recommend that the District provide ***. ¹⁹¹
- e. Student exhibits age-appropriate ***. ¹⁹²
- f. The evaluator recommended continued *** in the school setting through a *** which could be provided *** minutes per session, *** times per week; *** program to be used at home; and monitoring of Student's ***. ¹⁹³
- g. The evaluator recommended *** goals centered around ***. ¹⁹⁴ The recommendation is based on Student's standard score of ***, which is *** standard deviations below the mean and indicates a need for ***. ¹⁹⁵
56. The District's expert *** has never *** identified by Petitioner's expert ***. Student is highly intelligible in the school setting and understandable by Student's peers. Student can reasonably function in a school setting due to the services Student received through ***. ¹⁹⁶
57. The District's expert *** was Student's *** and worked with Student just about weekly over the course of the school year and observed Student in various settings. During that time, she observed no *** that had not been previously addressed in Student's IEP. During the course of the school year, none of Student's teachers expressed concern to the *** that Student exhibited any specific ***. ¹⁹⁷
58. On April ***, 2017, the *** school principal denied Parents' March ***, 2017 request for an ARDC meeting to address ***. Instead, Student was assigned to *** through the school counselor and a ***." *** are conducted by campus administrators. An ARDC meeting was not necessary because the ***, and not part of Student's IEP. ***. *** was the appropriate course of action for Student because Student is not a behavior problem and does not engage in behavior that would result in disciplinary consequences. ¹⁹⁸
59. On May ***, 2017, the *** school Principal informed Parents via email that Student had successfully completed ***. The number of completed lessons does not necessarily correlate to the number of weeks Student received ***. The *** took about *** minutes

¹⁹¹ Tr. at 383, 390-391 (Petitioner's expert ***); Pet. Ex. 48 at 3, 8-9.

¹⁹² Pet. Ex. 48 at 9.

¹⁹³ Tr. at 385-386, 400, 403 (Petitioner's expert ***); Pet. Ex. 48 at 10.

¹⁹⁴ Pet. Ex. 48 at 11-12.

¹⁹⁵ Tr. at 403 (Petitioner's expert ***).

¹⁹⁶ Tr. at 615-617 (District's expert ***).

¹⁹⁷ Tr. at 608-610, 612, 618 (District's expert ***).

¹⁹⁸ Tr. at 122-124, 134-140, 142-144, 152-153 (Principal); Tr. at 165 (***); Tr. at 614-615, 627 (District's expert ***); Pet. Ex. 57; Pet. Ex. 62; Pet. Ex. 64; Pet. Ex. 70; Pet. Ex. 98.

- each and were provided during Student's *** time after Student completed Student's ***.¹⁹⁹
60. From August ***, 2016, through April ***, 2017, Student received *** RtI in the general education classroom.²⁰⁰ The RtI was provided to Student either 1:1 or in a small group.²⁰¹
- a. On September ***, 2016, Student was *** with 94% accuracy, a ***,” and ***.
 - b. By November *** [sic], 2016, Student was *** with 90% accuracy, ***, and ***.”²⁰² Student's *** was in the “excellent” range.²⁰³ *** correlates to about a *** level.²⁰⁴
 - c. By March 2017, Student was *** with 95% accuracy.²⁰⁵
 - d. Between November 2016 and March ***, 2017, Student's accuracy in *** increased.²⁰⁶
61. Student's April ***, 2017 *** Progress Report shows Student was making expected progress but still requires *** support.²⁰⁷
62. The April ***, 2017 *** report by Petitioner's expert *** notes that although Student had made a little progress in *** in Student's current *** program, Student continued to demonstrate a significant *** given Student's cognitive abilities. She recommended that Student receive ***. *** and *** were not assessed due to time constraints; however sufficient information was obtained to make the recommendation.²⁰⁸
63. Student took the *** (***) assessment on September ***, 2016, January ***, 2017, and April ***, 2017.²⁰⁹ The primary purpose of the *** is to predict for teachers which of their students may need additional or intensive *** instruction to meet their grade level goals.

¹⁹⁹ Tr. at 123-126, 154-155 (Principal); Tr. at 165 (***) ; Pet. Ex. 98a; Resp. Ex. 87.

²⁰⁰ Tr. at 203-205, 210-216, 235-237 (***) teacher); Resp. Ex. 67; Resp. Ex. 68; Resp. Ex. 70 at 1-12.

²⁰¹ Tr. at 210 (***) teacher).

²⁰² Tr. at 203-205, 210-216, 235-237 (***) teacher); Resp. Ex. 67; Resp. Ex. 68; Resp. Ex. 70 at 1-12.

²⁰³ Pet. Ex. 41 at 37-42.

²⁰⁴ Tr. at 260 (***) teacher).

²⁰⁵ Tr. at 203-205, 210-216, 235-237 (***) teacher); Resp. Ex. 67; Resp. Ex. 68; Resp. Ex. 70 at 1-12.

²⁰⁶ Tr. at 237 (***) teacher).

²⁰⁷ Pet. Ex. 103a at 10.

²⁰⁸ Tr. at 280-281, 290-292, 294-298 (Petitioner's expert ***); Pet. Ex. 123 at 4-6.

²⁰⁹ Resp. Ex. 81; Resp. Ex. 82; Resp. Ex. 90. On the “****” section, “NA” stands for “not applicable,” indicating Student *** and “SD” stands for “still developing.” Tr. at 238 (***) teacher).

- The *** gives teachers an opportunity to acquire more data to help *** with specific student needs.²¹⁰
- a. On the September ***, 2016 ***, Student was “still developing” in areas of ***.²¹¹ ***.²¹²
 - b. On the April ***, Student’s *** and *** scores were below grade level.²¹³
64. Student’s *** showed Student had progressed from *** on September ***, 2016, to *** on May ***, 2017. Student received *** services for up to *** minutes per session and up to *** days per week throughout the school year. The services were provided to Student in ***.²¹⁴ Student is ready to proceed to level *** of the ***.²¹⁵
- a. Student made big gains in *** through ***. Student started out struggling to ***. Student progressed through the program, learning to ***. Student’s *** improved. Student was *** *** RtI. In the general education *** class, Student was ***. Student’s *** *** is very strong, as high as ***-grade level.²¹⁶
 - b. The *** (***) ***. Student’s percentages were low but are good given that Student had only completed *** steps of the *** program.²¹⁷ Student’s ***, which monitors progress for the *** steps Student completed, was 88 percent for *** and 85 percent for ***. A *** was not conducted in September, as a pre-assessment.²¹⁸
65. At the end of *** grade, Student was ***, *** at 90% and *** at seven out of seven. Student was able to ***. Since September 2016, Student had progressed from ***.²¹⁹
66. Student’s final grade in *** was a B.²²⁰

²¹⁰ Pet. Ex. 51 at 1-2; Resp. Ex. 82.

²¹¹ Pet. Ex. 41 at 35; Pet. Ex. 50; Pet. Ex. 51; Resp. Ex. 81; Resp. Ex. 82.

²¹² Pet. Ex. 51 at 2; Resp. Ex. 82.

²¹³ Tr. at 216-222, 239 (***) teacher); Resp. Ex. 90.

²¹⁴ Tr. at 164, 173, 184-185, 188, 195 (***) ; Resp. Ex. 88 at 1-4.

²¹⁵ Tr. at 191-192 (***) .

²¹⁶ Tr. at 167-169, 171, 173-174 (***) .

²¹⁷ Tr. at 188-190 (***) ; Resp. Ex. 88 at 1.

²¹⁸ Tr. at 189-190, 194, 196 (***) ; Resp. Ex. 88 at 1.

²¹⁹ Tr. at 171 (***) ; Tr. at 206-207, 222, 245-247, 256, 260 (***) teacher).

²²⁰ Tr. at 241 (***) teacher).

V. APPLICABLE LAW, ANALYSES, AND CONCLUSIONS

A. The IDEA and Its Implementing Regulations

Under the IDEA, and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet State standards (including IDEA requirements); (c) include an appropriate preschool, *** school, or secondary school education; and (d) are provided in accordance with a properly developed IEP.²²¹ States receiving federal assistance under the IDEA must: (1) provide a FAPE to each disabled child within its boundaries and (2) ensure that such education is in the LRE possible.²²²

B. Child Find

Petitioner alleges the District incorrectly determined Student should be dismissed from special education as a student with *** and improperly evaluated Student in determining Student does not meet eligibility for an SLD. Further, Petitioner alleges the District failed to provide a comprehensive and proper evaluation of Student when requested by Parents.

1. Mother's April 2016 Evaluation Request

In a duty known as "Child Find," a school district has an affirmative, ongoing obligation to evaluate any child who is a resident in the district's jurisdiction who either has or is suspected of having an IDEA-eligible disability and a need for special education as a result of that disability.²²³ The Child Find duty applies to all children, including children who are advancing

²²¹ 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

²²² *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247 (5th Cir. 1997); 20 U.S.C. § 1412(a)(1).

²²³ 34 C.F.R. §§ 300.8, 300.111.

from grade to grade.²²⁴ A request for an initial FIE may be made by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.²²⁵ When a parent requests a special education evaluation, a school district need only evaluate the student when the district suspects that the student has a disability.²²⁶ A district must notify parents in writing any time it refuses to evaluate a child.²²⁷

On April ***, 2016, Mother requested via email that Student be evaluated for an SLD. On April ***, 2016, the District sent Mother a Notice of Action, declining to perform the evaluation. On April ***, 2016, Mother again requested an SLD evaluation. A second Notice of Action, again refusing to conduct the requested evaluation, along with a Notice of Procedural Safeguards, was sent to Mother on May ***, 2016. Each Notice of Action comported with IDEA requirements.²²⁸ The District responded to Mother's request within 15 school days, as required.²²⁹

Further, the District correctly denied Mother's request because the District had no reason to suspect Student had an SLD which might result in a need for special education services. Under Texas law, prior to referral for an FIE, students experiencing difficulty in the general education classroom should be considered for support services available to all students, such as tutorial, remedial, compensatory, RtIs, and other academic or behavior support services. If a student continues to experience difficulty after the provision of interventions, district personnel must refer the student for an FIE.²³⁰ In the instant case, although Student was behind in ***, Student had made nearly a year's progress in *** levels since the beginning of the year as a result of RtIs and other academic support services. The District had no reason to suspect Student had a cognitive

²²⁴ 34 C.F.R. § 300.111(c).

²²⁵ 34 C.F.R. 300.301(b); 19 Tex. Admin. Code § 89.1011(a).

²²⁶ 34 C.F.R. § 300.301(b); *Alvin Indep. Sch. Dist. v. A.D.*, 503 F.3d 378, 383 (5th Cir. 2007); *Richard R.*, 567 F.Supp.2d at 950; *Flour Bluff*, 481 Fed. App'x at 893; *Letter to Williams*, 20 IDELR 1210 (OSEP 1993).

²²⁷ 34 C.F.R. § 300.503(a)(2).

²²⁸ 34 C.F.R. § 300.503(b).

²²⁹ 19 Tex. Admin. Code § 89.1011(b).

²³⁰ 19 Tex. Admin. Code § 89.1011.

weakness that needed to be addressed with special education services for Student's *** skills to continue to improve.

2. *** RtIs Were Effective

In May 2016, a District assessment confirmed Student has ***. Student began receiving general education *** services in August 2016. Before school started, Student's general education teachers received *** training from the District's ***. The *** *** was trained to *** as well as to provide services to students with ***.²³¹

In addition to other RtIs, Student's *** was addressed through ***, a research-based education program designed to meet Student's needs.²³² The record is silent as to whether *** is based on peer-reviewed research, which is not defined in the IDEA and has not been defined by the U.S. Department of Education. But there is nothing in the IDEA to suggest that a school district's failure to provide services based on peer-reviewed research automatically results in a denial of FAPE.²³³ The evidence shows Student made progress under ***. Student progressed from *** in September 2016 to *** in May 2017. Student will begin *** grade at ***. By the end of *** grade, Student was ***, having progressed from *** in September 2016. Student's *** grade for the year was a ***.

Although *** is a condition that may manifest itself in ***,²³⁴ However, ***,²³⁵ The FIE correctly established that Student does not have an SLD.

Petitioner's expert *** presented no testimony and her evaluation of Student did not establish any needs related to Student's *** services.²³⁶ Because Student made academic progress

²³¹ Tr. at 59 (District's Special Ed. Director).

²³² 34 C.F.R. § 300.39(b)(3).

²³³ 71 Fed. Reg. 46,665 (2006).

²³⁴ 34 C.F.R. § 300.8(c).

²³⁵ 34 C.F.R. § 300.8(c)(10)(i).

²³⁶ Tr. at 290-292, 296, 302-304 (Petitioner's expert ***).

due to the general education *** services, the District had no reason to suspect Student needed special education services to benefit academically.

3. Mother's December ***, 2016 Evaluation Request

On December ***, 2016—after Student's November 2016 FIE was completed, but before the FIE was considered by the ARDC—Mother made a written request for IEEs in all areas of Student's suspected disability, including but not limited to “Achievement, Cognitive, SLD [sic], ***, ***, and *** as soon as possible.” The hearing officer notes that Student's *** conducted on September ***, 2016, showed Student's *** is within normal limits unaided.

Also on December ***, 2016, Mother informed the *** school principal that she was not available to attend the December ***, 2016 ARDC meeting to consider Student's FIE. The Special Education Director notified Mother on December ***, 2016, that once the FIE was final, Parents could disagree with the results and request an IEE. The District attempted to reschedule the ARDC meeting for five separate dates in December 2016 and January 2017, but Parents were not available on any of the suggested dates. Parents proposed meeting on January ***, 2017 (a school holiday) or January ***, 2017 (District staff was unavailable). The District received Parents' Complaint on January 17, 2017, and filed a counterclaim on February 14, 2017. The counterclaim served as a denial of Mother's December ***, 2016 IEE request.²³⁷

The IDEA requires that a counterclaim to defend an FIE be filed “without unnecessary delay.”²³⁸ Just one week after Mother requested the IEEs, the Special Education Director explained to her that the ARDC must first consider the FIE. The District made a good faith effort to reschedule the ARDC before the winter break and immediately following the winter break. Parents filed the Complaint before the ARDC could meet to review the FIE. Given the scheduling conflicts on the parts of both Parents and District staff, it was reasonable for the District to go ahead and file its counterclaim before the ARDC meeting was held. Although the counterclaim

²³⁷ 34 C.F.R. § 300.502(b)(2)(i).

²³⁸ 34 C.F.R. § 300.502(b)(2)(i).

was not filed until February 14, 2017—well after Mother’s December ***, 2016 request—the delay was not unnecessary; in the interim, the District was attempting to reschedule an ARDC meeting to review the FIE.

Petitioner did not meet Petitioner’s burden of proof to show the District violated its Child Find duty by failing to timely identify or evaluate Student as a child with an eligible disability in need of special education and related services.

4. The District’s FIE Was Appropriate

The District’s November 2016 FIE was appropriate, timely, and correctly concluded Student is no longer eligible for special education services as a child with *** and does not have an SLD. Petitioner did not prove the FIE was incomplete or insufficient, or that it failed to comply with IDEA requirements. The hearing officer finds that the FIE does, in fact, comply with all IDEA requirements and is appropriate.²³⁹

Specifically, Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information from Parents, which enabled the multi-disciplinary team to determine Student does not have an IDEA-enumerated eligibility that requires Student to receive special education services. The FIE multi-disciplinary team assessed Student in all areas of suspected disability, including in the areas of ***, ***, ***, ***, and ***. The FIE report was sufficiently comprehensive to identify all of Student’s educational and related services’ needs, and provided the ARDC with information necessary to determine whether Student had an IDEA-eligible disability that required special education services.

The FIE multi-disciplinary team correctly used the pattern of strengths and weaknesses model to determine Student does not have an SLD. The model is consistent with the IDEA and

²³⁹ 34 C.F.R. §§ 300.301, .304-.311.

Texas law.²⁴⁰ The FIE established that Student's cognitive scores are all within the average or above average range, but Student has an academic weakness in *** which is due to Student's ***, not due to a cognitive deficit. The hearing officer finds the District utilized criteria consistent with the IDEA and Texas law in denying Student eligibility as a student with an SLD.

In addition, the FIE multi-disciplinary team correctly determined that Student's *** no longer adversely affected Student's educational performance and did not rise to the level of a need for special education services.²⁴¹ Petitioner's expert *** could not, and did not, establish that any *** she found had an adverse impact on Student's educational performance. She acknowledged that any *** had only a "potential" educational impact and "could" ***.²⁴² Student no longer needs *** to function in the educational environment. By the time of the February 2017 ARDC meeting at which the FIE was considered, Student had met Student's IEP *** goal ahead of the April 2017 annual review date and was maintaining Student's ability to ***.

The hearing officer concludes that the District met its Child Find obligation and did not deny Student a FAPE by failing to correctly identify and evaluate Student.

C. The District Followed Procedural Requirements

Petitioner alleges the District did not comply with all the procedural requirements of the IDEA and Texas law. Petitioner offered no evidence of specific procedural violations committed by the District.

A procedural violation may amount to a denial of FAPE only if the violation: (1) impeded the student's right to a FAPE; (2) significantly impeded a parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or (3) caused a

²⁴⁰ 34 C.F.R. §§ 300.8(c)(10), .307, .309(a)(1); 19 Tex. Admin. Code § 89.1040(c)(9)(B)(ii)(11).

²⁴¹ 34 C.F.R. §§ 300.8(c)(11).

²⁴² Tr. at 385 (Petitioner's expert ***).

deprivation of educational benefit.²⁴³ As discussed below, Petitioner did not prove its assertion that the District failed to comply with a procedural requirement of the IDEA or Texas law.

Prior Written Notice must be given when a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.²⁴⁴ The evidence shows Parent was provided with Prior Written Notice at the April 2016, May 2016, and February 2017 ARDC meetings, as required by law. Petitioner presented no evidence that the Prior Written Notice was inadequate.

As relevant to this proceeding, a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents upon receipt of a due process hearing request under the IDEA.²⁴⁵ Petitioner presented no evidence that the District failed to provide Parents with a Notice of Procedural Safeguards upon receipt of the Complaint on January 17, 2017. Instead, the evidence shows the District provided Parent with a Notice of Procedural Safeguards at the ARDC meetings held in October 2015 (before the accrual date for this proceeding), April 2016, May 2016, September 2016, and February 2017. In addition, the District provided Parent with a Notice of Procedural Safeguards in May 2016 and in September 2016 when Parent signed consent for Student to be evaluated.

Assuming, *arguendo*, that the District committed a procedural error, the error would not have amounted to a denial of FAPE. Parent actively participated in every ARDC meeting and was involved in the decision-making process regarding Student's IEP. Parent also regularly communicated with District staff. Parents were not denied the opportunity for meaningful participation in Student's educational process and Student did not suffer any loss of educational opportunity as a result of any procedural error by the District.²⁴⁶

²⁴³ 34 C.F.R. § 300.513(a)(2).

²⁴⁴ 34 C.F.R. § 300.503; *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012), *cert. denied*, 133 S. Ct. 1600, 113 LRP 10911 (2013).

²⁴⁵ 34 C.F.R. § 300.504(a)(2).

²⁴⁶ 34 C.F.R. § 300.513(a)(2)(ii), (iii).

D. Provision of FAPE

Upon a finding that a child has a disability, an ARDC must develop an IEP for the child.²⁴⁷ The IEP must meet specific requirements of the IDEA and Texas law.²⁴⁸

The U.S. Supreme Court first addressed the question of when an IEP provides a FAPE in *Board of Education of Hendrick Hudson Central School District v. Rowley, Westchester County*, 458 U.S. 176 (1982). The Fifth Circuit summarized the *Rowley* standard:

[An IEP] need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him 'to benefit' from the instruction. In other words, the IDEA guarantees only a 'basic floor of opportunity' for every disabled child, consisting of 'specialized instruction and related services which are individually designed to provide educational benefit.' Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or *de minimis*; rather, an IEP must be 'likely to produce progress, not regression or trivial educational advancement.' In short, the educational benefit that an IEP is designed to achieve must be 'meaningful.' (internal citations omitted).²⁴⁹

In 2017, in *Andrew F. v. Douglas Cnty. Sch. Dist.*, the Supreme Court revisited the question of what constitutes a FAPE and concluded a FAPE "requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."²⁵⁰

Since at least 1997, the Fifth Circuit has tied the provision of a FAPE to an inquiry into a child's unique circumstances, a standard that is in alignment with the *Andrew F.* holding.²⁵¹ The

²⁴⁷ *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d at 1007; *Cypress-Fairbanks Indep. Sch. Dist.*, 118 F.3d at 247; 20 U.S.C. § 1415(b)(1).

²⁴⁸ 34 C.F.R. §§ 300.320 - 300.324; 19 Tex. Admin. Code § 89.1055.

²⁴⁹ *Bobby R.*, 200 F.3d at 347, citing to *Cypress-Fairbanks*, 118 F.3d at 247-48.

²⁵⁰ *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 1001 (2017); *Rowley*, 458 U.S. 176, 181 (1982); see *C.M. v. Warren Indep. Sch. Dist.* 117 LRP 17212 (E.D. Tex. 2017)(unpublished).

²⁵¹ *C.G. v. Waller Indep. Sch. Dist.*, No. 16-20439 (5th Cir. 2017).

Fifth Circuit has set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a ‘meaningful’ educational benefit under the IDEA. These factors are whether (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 nonacademic benefits are demonstrated.²⁵² The factors need not be accorded any particular weight or be applied in any particular way. Instead, they are indicators of an appropriate IEP.²⁵³

The ARDC complied with the IDEA’s regulatory requirements, Texas law, and relevant case law in developing an IEP reasonably calculated to provide a meaningful educational benefit to Student and was appropriate in light of Student’s circumstances.²⁵⁴

1. Student’s IEP was individualized, based on Student’s assessments and performance

The evidence shows that, when developing Student’s IEP, the ARDC considered Student’s strengths, Parents’ concerns, the results of Student’s most recent evaluations, and Student’s academic, developmental, and functional needs.²⁵⁵ The ARDC also considered Student’s need for related services.²⁵⁶ When Student initially was enrolled in the District as *** grader in August 2015, the District accepted Student’s transfer IEP and provided Student with the designated related service of ***. In October 2016, the ARDC timely conducted Student’s annual review and developed a *** goal based on Student’s November 2014 FIE. Student’s IEP *** goal and objectives were revised at an April ***, 2016 ARDC meeting, based on updated information provided by Mother, District staff, and ***’s director. The hearing officer concludes Student’s IEP was individualized, based on Student’s assessments and performance.

²⁵² *Cypress-Fairbanks Indep. Sch. Dist.*, 118 F.3d at 253.

²⁵³ *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009); *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d at 397.

²⁵⁴ *Andrew F.*, at 1001; *Bobby R.*, at 347-349, citing to *Cypress-Fairbanks*, 118 F.3d at 247-248, 253; 34 C.F.R. §§ 300.320, .324.

²⁵⁵ 34 C.F.R. § 300.324(a)(1).

²⁵⁶ 34 C.F.R. § 300.320(a)(4).

Petitioner complains that the District failed to provide Student with ESY services. ESY services are special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child's IEP at no cost to child's parents.²⁵⁷ ESY services must be provided only if the ARDC determines, on an individual basis, that the services are necessary for provision of a FAPE to the child.²⁵⁸ If the benefits accrued to the child during the regular school year will be significantly jeopardized if Student is not provided a summer educational program, then ESY services are required.²⁵⁹

Because the accrual date for this proceeding is January 17, 2016, and the due process hearing was held May 30-31, 2017, the period at issue for ESY services is the summer of 2016. The evidence shows Student received instruction from *** and attended *** ***, but did not receive ESY services. The evidence also shows that at the October 2015, April 2016, and May 2016 ARDC meetings, ESY services were discussed and not recommended either by Parents or the District because Student exhibited no documented regression in academic progress.

The hearing officer finds the ARDC correctly determined Student was not eligible for ESY services in the summer of 2016.

2. The IEP was administered in the LRE

The IDEA's LRE provision requires that students with disabilities receive their education in the regular classroom environment to the maximum extent appropriate or, to the extent such placement is not appropriate, in an environment with the least possible amount of segregation from the student's nondisabled peers and community.²⁶⁰ In making a placement decision, "first consideration" should be given to placement in a regular classroom before considering more

²⁵⁷ 34 C.F.R. § 300.106(b).

²⁵⁸ 34 C.F.R. § 300.106(a)(2).

²⁵⁹ *Alamo Heights School District v. State Board of Education*, 790 F.2d. 1153 (5th Cir. 1986).

²⁶⁰ 34 C.F.R. § 300.114(a).

restrictive placement options on the continuum of alternative placements, which includes special classes, special schools, home instruction, and instruction in hospitals and institutions.²⁶¹

The ARDC met all legal requirements in determining the LRE for Student.²⁶² Except for ***-minute *** *** to be provided *** times per *** in the *** room, Student received all instruction in the general education setting. The hearing officer finds Student's placement was based on Student's unique educational needs and circumstances, and on Student's IEP. Petitioner did not prove the District denied Student a FAPE by failing to place Student in the LRE.

3. Key stakeholders provided the services in a coordinated and collaborative manner

Parents are an integral part of the IEP development process and, as such, are key stakeholders in the provision of services to their child, as are a student's teachers and a school district's administrators.²⁶³ All members of the ARDC must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARDC concerning required elements of the IEP must be made by mutual agreement, if possible.²⁶⁴

Petitioner offered no evidence of any lack of coordination or collaboration in the development of Student's IEP. Instead, the evidence shows Parent fully participated in the ARDC meetings. Although Parents have the right to provide meaningful input, the right "is simply not the right to dictate the outcome and obviously cannot be measured as such."²⁶⁵ The ARDC was not required to rely solely on outside assessments or to act as Parents requested.²⁶⁶

²⁶¹ *Letter to Cohen*, 25 IDELR 516 (OSEP 1996); 34 C.F.R. § 300.115(a), (b); 19 Tex. Admin. Code § 89.63.

²⁶² 34 C.F.R. §§ 300.114 - .120; .327; .501(c)(1).

²⁶³ 34 C.F.R. § 300.321(a).

²⁶⁴ 19 Tex. Admin. Code § 89.1050(g).

²⁶⁵ *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d. 373, 380 (5th Cir. 2003).

²⁶⁶ *Warren Indep. Sch. Dist.*, 117 LRP 17212 (E.D. Tex. 2017).

After the IEP was developed, Student's ***, teachers, and *** were timely provided copies of Student's IEP goal and objectives, schedule of services, accommodations and modifications, and State/District testing instructional supports in April 2016 and August 2016. Student's *** grade general education teacher and the *** director routinely communicated about Student's *** progress. Mother and District staff regularly discussed Student's academic and nonacademic progress.

Petitioner complains that the District did not track Student's IEP progress or provide regular IEP Progress Reports to Parents during the 2015-2016 school year. The record is silent as to whether formal IEP Progress Reports were issued. Petitioner, who has the burden of proof, offered no evidence that the IEP Progress Reports were not provided. However, the evidence shows that Parent attended and participated in ARDC meetings in October 2015 (before the accrual date for this proceeding) and in April 2016 and May 2016, during which Student's progress was discussed.

The evidence further shows that during the 2016-2017 school year, IEP Progress Reports were provided to Parents ***, with Student's report card, in accordance with Student's IEP. Parents were not prevented from participating in Student's educational decisions due to a lack of information about Student's progress toward meeting Student's IEP goal.

The hearing officer finds that Petitioner did not prove the District failed to provide IEP Progress Reports to Parents during the 2015-2016 school year. The hearing officer further finds that Student's educational services were provided in a collaborative and coordinated manner by key stakeholders.

4. Positive academic and non-academic benefits

The evidence shows the IEP was reasonably calculated to provide Student with academic and non-academic benefits given Student's unique circumstances.²⁶⁷ The IEP Progress Reports

²⁶⁷ *Cypress-Fairbanks*, 118 F.3d at 247-248, quoting *Rowley*, 458 U.S. at 188-189.

updated *** show Student mastered Student's *** goal before the April 2017 ARDC annual review date. As of May 2017, Student was maintaining a level of mastery with *** and Student's ***. Outside the *** room, Student is highly ***. Student can reasonably function in a school setting due to the services Student received through ***. The hearing officer finds Student's IEP was reasonably calculated to provide Student with academic and non-academic benefits.

E. Conclusion

After considering the evidence and parties' closing arguments, the hearing officer finds Petitioner did not meet Petitioner's burden of proof to prevail on any of the identified issues for this proceeding. Instead, the evidence shows the District's FIE was appropriate. The District properly identified, evaluated, and placed Student; provided Student a FAPE in accordance with the IDEA and relevant case law; and committed no procedural violations. Accordingly, Petitioner is not entitled to any of the requested relief.

VI. CONCLUSIONS OF LAW

1. The District is a local educational agency responsible for complying with the IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Parents of students with disabilities are entitled to file a due process complaint and have a hearing on any matter relating to the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. 20 U.S.C. § 1415(f); 34 C.F.R. §§ 300.507-.513.
3. Petitioner bears the burden of proof on all issues raised in its due process hearing request. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
4. Respondent bears the burden of proof on its counterclaim. 34 C.F.R. § 300.502(b)(2)(i).
5. A party attacking the appropriateness of an IEP established by a school district bears the burden of showing why the IEP and resulting placement were inappropriate under the IDEA. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011 (5th Cir. 2010).

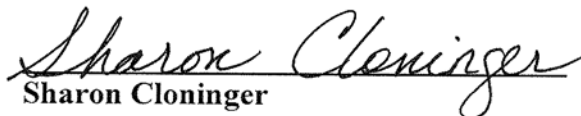
6. The one-year statute of limitations applies to this proceeding, resulting in an accrual date of January 17, 2016. 19 Tex. Admin. Code § 89.1151(c).
7. Student is not eligible for special education and related services as a child with a Specific Learning Disability or ***. 34 C.F.R. §§ 300.8***, .307-.311; 19 Tex. Admin. Code § 89.1040***.
8. The District fulfilled its Child Find obligation as to Student. 34 C.F.R. § 300.111; 19 Tex. Admin. Code § 89.1011.
9. The District's Full Individual Evaluation of Student, including the evaluation for a Specific Learning Disability, was conducted in accordance with IDEA requirements and is appropriate. 34 C.F.R. §§ 300.8(c)(10), .301, .303 - .311; 19 Tex. Admin. Code § 89.1040(b)(9).
10. The District provided Student with a FAPE during the time period relevant to this proceeding. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 1001 (2017); *Board of Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181 (1982); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347-348 (5th Cir. 2000).
11. The District developed an appropriate IEP for Student. 34 C.F.R. §§ 300.320 - .324, .502(c)(1); *Andrew F.*, 137 S. Ct. at 1001; *Cypress-Fairbanks*, 118 F.3d at 253 (5th Cir. 1997).
12. Student's placement meets the LRE requirements of the IDEA. 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114, .116; *Daniel R. R. v. State Board of Education*, 874 F.2d 1036, 1039, 1046-1047 (5th Cir. 1989).
13. The District did not deny Student a FAPE by failing to comply with any of the procedural requirements of the IDEA and Texas law. 34 C.F.R. §§ 300.8, .503, .513(a)(2); 19 Tex. Admin. Code §§ 89.1040(c)(8), .1050.

ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's requested relief is denied.

SIGNED June 30, 2017.


Sharon Cloninger
Special Education Hearing Officer
For the State of Texas

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.²⁶⁸

²⁶⁸ 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).