

STUDENT, *B/N/F* PARENT,
EDUCATION

Petitioner,

V.

MESQUITE INDEPENDENT
SCHOOL DISTRICT,

Respondent.

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BEFORE A SPECIAL

HEARING OFFICER

FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Mesquite Independent School District (“Respondent” or “District” or “MISD”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). 20 U.S.C. §1400 *et. seq.* Student asserted that the District denied Student a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”) based upon the following violations of IDEA occurring from January 7, 2019, to January 7, 2020:

- a. Whether the District failed to evaluate Student in all areas of suspected need;
- b. Whether the District failed to consider outside evaluations done at the District’s expense in the recent Independent Educational Evaluation (“IEE”);
- c. Whether the District failed to find that Student is eligible for special education and related services for Autism (“AU”) and Speech Impairment (“SI”);
- d. Whether the District failed to develop and design an appropriate Individualized Education Program (“IEP”) that addresses all of Student’s disabilities, including language deficits and academic concerns.

Petitioner requested that the undersigned Special Education Hearing Officer (“SEHO”) order the District to find Student eligible for special education and related services as a student with AU and a SI. Petitioner further requests that the District develop an appropriate IEP in the LRE that complies with the IEE findings of AU and SI and addresses Student’s educational needs in academics, behavior, and language.

II. PROCEDURAL HISTORY

Student filed Student's Complaint with TEA on January 7, 2020. On that same day, TEA assigned this matter to the undersigned SEHO and sent a copy of the Complaint and Notice of Filing to Respondent. Also on January 7, 2020, the undersigned sent the Initial Scheduling Order to the Parties, stating that the prehearing telephone conference ("PHC") would convene on February 10, 2020; the Disclosure Date would be February 27, 2020; the Due Process Hearing would take place on March 6, 2020; and the Decision would issue on, or before, March 22, 2020. On January 16, 2020, the District filed its Response to Student's Complaint.

On February 10, 2020, the Parties convened the PHC. In attendance were the following: (1) Ms. ***, Petitioner's Parent; (2) Mr. Gary Grimes, Respondent's Counsel; (3) Ms. ***, Respondent's Executive Director of Special Education; (4) Ms. ***, Respondent's Coordinator of Special Education; (5) Ms. ***, Respondent's Coordinator of Special Education; (6) the undersigned Hearing Officer; and (7) the court reporter, who made a record of the telephone conference. The Parties discussed the issues and jointly agreed to maintain the Due Process Hearing schedule set out in the January 7, 2020, Initial Scheduling Order of the Special Education Officer. On February 17, 2020, the undersigned issued Order No. 2: Scheduling Order of the Special Education Hearing Officer. At no time prior to, or during, this PHC did Student's Parent request a Spanish Interpreter.

On February 19, 2020, Student's Parent requested the first motion for continuance of the hearing and attendant deadlines to allow her time to retain an advocate or attorney to represent Student in the March 6, 2020, hearing. The District did not object to Student's continuance request. Accordingly, the undersigned found good cause for the continuance and requested that the Parties provide dates for rescheduling the hearing. On February 25, 2020, the undersigned informed the Parties that pursuant to their available dates, the Disclosure Deadline was continued to April 17, 2020, and the Due Process Hearing was continued to April 27, 2020. On February 26, 2020, the undersigned issued Order No. 3: Granting Continuance and Rescheduling the Hearing.

On, or about, March 11, 2020, Ms. Carolyn Morris made her appearance as Advocate for Petitioner. Ms. Morris requested a second PHC, which convened on March 30, 2020. In attendance were the following: (1) Ms. ***, Petitioner's Parent; (2) Ms. Carolyn Morris, Petitioner's Advocate; (3) Mr. Gary Grimes, Respondent's Counsel; (4) Ms. ***, Respondent's Executive Director of Special Education; (5) the court reporter, who made a record of the telephone conference; and (6) the undersigned SEHO. The Parties discussed the issues and Petitioner's unopposed second Motion for Continuance based upon the current Covid-19 pandemic as well as Petitioner's need to add additional claims in an amended filing. At no time prior to, or during, this PHC did Student's Parent request a Spanish Interpreter.

On March 30, 2020, the undersigned issued Order No. 4: (1) Granting Second Unopposed Request for Continuance, and (2) Rescheduling Due Process Hearing, which scheduled the Disclosure Deadline for June 6, 2020; the Due Process Hearing for July 6-7, 2020; and the Decision Deadline for August 11, 2020.

The Parties made their Disclosures timely and the Due Process Hearing convened via ZOOM on July 6-7, 2020. Both Parties introduced documentary evidence and a binder of Joint Exhibits; Petitioner called several witnesses, who were cross-examined by Respondent; Respondent called several witnesses, who were cross-examined by Petitioner.

During the Hearing, Petitioner was represented by (1) Ms. Carolyn Morris, Student's Advocate; (2) Ms. ***, Student's Parent; (3) Ms.***, a Spanish Interpreter for the Parent; and (4) Ms. Debra Jackson, Assistant to Ms. Morris.

Respondent was represented by (1) Mr. Gary Grimes, the District's counsel; and (2) Ms. ***, the District's Executive Director of Special Education.

At the conclusion of the Hearing, the Parties requested time to make a written closing argument and an extension of the Decision Deadline, which was granted. Both Parties filed and served their Closing Arguments on the agreed briefing deadline, August 31, 2020. This Decision of the Special Education Hearing Officer is being delivered to the Parties on the agreed deadline of September 14, 2020.

III. RESOLUTION SESSION

On January 16 and 21, 2020, the Parties convened the Resolution Session but did not reach an agreement.

IV. FINDINGS OF FACT ¹

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is a ***-year-old *** who qualifies for special education and related services under the primary disability of Emotional Disturbance ("ED") and a secondary disability of Other Health Impairment ("OHI") for Attention Deficit, Hyperactivity Disorder ("ADHD").
3. Student resides within the District's jurisdictional boundaries with Student's biological mother and ***; the District is responsible for providing Student with an appropriate education under IDEA and its federal and state implementing statutes.

School Year 2013-2014: * Grade**

4. Student's teachers were reporting Student's negative behaviors, such as refusing to do work; throwing fits; neglecting Student's school work, which caused Student's grades to suddenly drop; and high levels of verbal and physical aggression [JX15.15-16].
5. In March 2014, the District performed a special education Full and Individual Evaluation ("FIE") [JX15.1]. The assessor administered the Autism Diagnostic Observation Schedule, 2nd edition

¹ References to the Due Process Hearing Record are identified as follows: "T#.#.#" refers to the two-volume Court Reporter's Transcription of testimony made on July 6-7, 2020, and the specific volume, page, and line numbers contained therein; "JX#.#" refers to the Joint Exhibits by number and page; "P#.#" refers to Petitioner's Exhibits by number and page; "R#.#" refers to Respondent's Exhibits by number and page; and "JSF#" refers to the Joint Stipulation of Facts by number.

("ADOS-2") [JX23.13]. Based upon these assessments, Student's behaviors were deemed consistent with anxiety at home, but not at school [JX23.13]. Student's intellectual ability was found to be in the average range, with a Standard Score of *** [JX23.13]. Student manifested a slight weakness in Processing Speed, which measured at a Standard Score of ***. Student's overall Verbal Comprehension, an area that is often impaired in children with AU, was measured at a Standard Score of ***, which is well above average [JX23.13].

6. On April ***, 2014, Student's Admission, Review, and Dismissal Committee ("ARDC") found Student eligible for special education and related services under OHI, for ADHD, and developed measurable goals and objectives for ***; English language arts and reading; and math [JX15.4-5]. The ARDC likewise developed modifications and accommodations and placed Student in general education classrooms with supplementary aids and services [JX15.6-8]. The ARDC did not find that Student had a communication disability or demonstrable behaviors consistent with AU, although the ARDC did recommend a Functional Behavior Assessment ("FBA") [JX15.15-16]. The ARDC also requested an additional evaluation for ED, which would take place in Fall 2014 [JX15.26]. The ARDC reached consensus with the Parent's agreeing with the Individual Education Plan ("IEP") developed. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. The April ***, 2014, ARDC Report states that Student is not limited in English proficiency [JX15.1]; and that the Notice of the ARDC meeting to Student's Parent was in English, the Parent's understandable language [JX15.507].
7. On May ***, 2014, Student's ARDC met to conduct an FBA and develop a Behavior Intervention Plan ("BIP") [JX14.1]. Student's Parent and teachers were continuing to observe negative behaviors: disruption of classroom; verbal and physical aggression; disturbing others; slow attention span; easily distracted; slow to begin a task; unprepared and unorganized; difficulty following oral instruction; out of Student's seat; and *** [JX14.3-4]. The ARDC developed a BIP, which addressed certain targeted behaviors: *** [JX14.8-9]. The ARDC developed a behavior goal [JX14.450]. The Notice of this ARDC meeting to Student's Parent was in English, the Parent's understandable language [JX14.455]. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. Student's Parent agreed with the ARDC [JX14.449].

School Year 2014-2015: * Grade**

8. Student was re-evaluated in November 2014 in the areas of OHI for ADHD, ED, and OT [JX13.16]. Student's ARDC met on December ***, 2014, to review the new assessments [JX13.16]. The ARDC determined that Student qualified for special education services in the area of OHI for ADHD, but Student did not qualify under ED or OT [JX13.16]. The ARDC also reviewed and adopted Student's previous goals and objectives, present levels of academic achievement and performance, and Student's BIP. Student was placed in the general education setting with less than *** of the time in the ***. The ARDC Report noted that Student is **not** a second language learner [JX13.5]. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. Student's Parent was in agreement with the findings of this ARDC [JX13.18].

School Year 2015-2016: * Grade**

9. Student's ARDC met for Student's annual ARD on November ***, 2015. The Committee reviewed

and accepted Student's November 2014 FIE and determined no new evaluation was needed. Student would continue to receive special education and related services under OHI due to Student's ADHD [JX12.1]. The ARDC reviewed and revised Student's goals and objectives; and reviewed Student's present levels of academic achievement and performance. Staff and Student's Parent reported that Student's behavioral responses had changed [JX12.15]. The ARDC developed supplementary aids and a BIP [JX12.15]. Student remained in the general education setting with less than *** of the time in the *** [JX12.13]. The ARDC Report noted that Student is **not** a second language learner [JX12.4]. This ARDC meeting was conducted in English. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. Student's Parent was in agreement with the findings of this ARDC [JX12.16].

School Year 2016-2017: * Grade**

10. On August ***, 2016, Student's ARDC met and developed an IEP Amendment to the November 2015 IEP [JX11.1]. This Amendment added daily instructional minutes to Student's schedule due to an increase in minutes propounded by the State of Texas, which increased Student's *** minutes per day to *** minutes per day [JX.11.1]. The Parent agreed to the ARDC meeting without participating in the meeting [JX11.1].
11. On September ***, 2016, Student's ARDC implemented a second IEP Amendment to the November 2015 IEP [JX10.1]. The Parent gave the ARDC permission to implement this IEP Amendment over the phone [JX10.1]. The Amendment implemented an acceleration program because Student did not meet the passing standards on the State of Texas Assessments of Academic Readiness ("STAAR") in *** [JX11.1].
12. On November ***, 2016, Student's ARDC convened Student's annual ARD [JX9.1]. The ARDC recommended Student's full-time placement in the general education setting [JX9.11]. The ARDC reviewed and revised Student's goals and objectives; developed accommodations; and determined that supplemental aids were not needed [JX9.14]. The ARDC continued Student's primary disability as OHI for ADHD [JX9.1]. The ARDC Report noted that Student had **no** limited English proficiency [JX9.1] and that Student was not a second language learner [JX9.4]. The Committee noted that Student's next evaluation would be due by November ***, 2017. This ARDC meeting was conducted in English. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. Student's Parent agreed with the ARDC's plan [JX9.15].

School Year 2017-2018: * Grade**

13. In early November 2017 the District conducted Student's FIE, Student's three-year reevaluation [JX23.13]. The District administered another psychological evaluation along with new intellectual and achievement testing. Using the Kaufman Assessment Battery for Children, 2nd edition ("KABC-2"), Student's intellectual ability was measured within the average range with all processing areas within the average range and a Fluid Crystallized Intelligence ("FCI") of *** [JX23.14].² The Kaufman Test of Educational Achievement, 3rd edition ("KTEA-3") revealed scores within the

² Testimony from the District's LSSP revealed that Student's emotional presentation had "crystalized." This term refers to a level of development and maturity in a person that makes it clearer and easier to determine what is really going on with an individual's emotions and behaviors [TI.214.14-215.3]

average range in all areas with the exception of Written Expression and Math Calculation, both of which were just below the average range of scores. The psychological evaluation revealed symptoms of Student's ADHD; Student's behavioral and emotional presentation had crystallized; Student had symptoms of both *** that manifested across settings and met TEA criteria as a student with an ED [JX23.14]. Accordingly, Student's primary disability became ED with the OHI for ADHD's being a secondary disability.

14. On November ***, 2017, Student's ARDC meet for Student's annual ARD and to review Student's recent evaluations [JX8.1]. The Committee reviewed the assessment dated November ***, 2017 [JX8.15]. This evaluation determined that Student qualified for special education services as a student with an ED [JX8.15]. The Committee developed a BIP [JX8.19]; reviewed and revised Student's IEP goals and objectives [JX8.15]; and continued Student's placement in the general education setting [JX8.13]. Student's Parent was in attendance at this ARDC meeting. This ARDC meeting was conducted in English. At no time prior to, or during, this ADRC meeting did Student's Parent request a Spanish Interpreter. Student's Parent concurred with the recommendations of the Committee [JX8.16].

School Year 2018-2019: * Grade**

15. In October 2018 Student's Parent obtained a private evaluation at the recommendation of staff at Student's physician's office [JX23.14]. The evaluator interviewed Student's Parent and met with Student. She administered an intelligence test and an academic achievement test, the Diagnostic Assessment Battery, 4th Edition. She presented ADHD rating Scales completed by Student's Parent, teachers, and Student's ***. Each of these individuals completed the Gilliam Asperger Disorder Scale ("GADS"), which assesses behaviors associated with Asperger's Syndrome, a diagnosis previously used in the Diagnostic and Statistical Manual of Mental Disorders-IV-Text Revision ("DSM-IV-TR"). Based upon these assessments, the outside evaluator concluded that Student met the criteria for ADHD and AU [JX23.14].
16. On October ***, 2018, Student's ARDC met to conduct a Review of Existing Evaluation Data ("REED") [JX6.23-28] and to revise Student's November ***, 2017, IEP [JX7.1]. Student's Parent requested this meeting to discuss (1) additional testing for Student in the areas of SI and AU, and (2) conducting a new FBA [JX7.2]. The members asked the Parent if she wanted additional testing in the areas of OT and Specific Learning Disability ("SLD") [JX.7.2]. The Parent declined these assessments. No other changes were made to Student's November ***, 2017, IEP [JX7.2]. This ARDC meeting was conducted in English. At no time prior to, or during, this ADRC meeting did Student's Parent request a Spanish Interpreter. Student's Parent agreed with the ARDC's recommendations [JX7.3].
17. On November ***, 2018, Student's ARDC met for Student's annual ARD (JX6.16). Student's Parent brought a *** Social Worker to the ARDC meeting who indicated that the Parent would probably not agree to the IEP Report based on an ED disability [JX6.16]. During the discussion of Student's behaviors, the Parent indicated that the family was dealing with negative behaviors that the ARDC did not recognize at school [JX6.16-18]. The Committee developed a BIP [JX6.28-30]; discussed an Assistive Technology ("AT") assessment, which the Committee deemed unnecessary; developed accommodations; and discussed Student's remaining in the general education setting

for all services [JX6.18]. The social worker requested that Student be pulled out of general education for ***, which the Parent at first declined [JX6.18]. After the social worker met privately with the Parent, the Parent requested the *** pull-out, to which the Committee agreed [JX6.18]. This ARDC meeting was conducted in English. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. The social worker and administrator exchanged words and the administrator tabled the ARDC meeting [JX6.18].

18. The tabled November ***, 2018, ARDC meeting reconvened on November ***, 2018 [JX6.18]. The LSSP reviewed the October 2018 outside evaluation for AU. The Committee reviewed *** goals and objectives for pull out *** lessons, which would be taught in isolation and applied upon Student's return to the *** setting [JX6.18]. The ARDC agreed to provide Student's Parent weekly status reports of Student's performance and agreed to the IEP decisions during the November ***, 2018, ARDC meeting. This ARDC meeting was conducted in English. At no time prior to, or during, this ARDC meeting did Student's Parent request a Spanish Interpreter. Student's Parent concurred with this IEP Report [JX6.20].
19. On January ***, 2019, the District conducted an FIE at the request of Student's Parent [JX5.1], which was accomplished by an multidisciplinary team that reviewed Student's October 2018 outside evaluation; assessments conducted for ED (dated November ***, 2017); OHI (dated January ***, 2019); AU (dated January ***, 2019); and SI (dated January ***, 2019) [JX5.1]. The District's multidisciplinary team included the following:
 - (a). an M.Ed., Educational Diagnostician who reviewed Student's records, including educational records, report cards, state and district assessments, Home Language Survey, information from previous FIEs, dated 11/***/2014 and 11/***/2017, and Hearing and Vision Screening from the school nurse. This Educational Diagnostician administered the Wechsler Individual Achievement Test III [JX23.2];
 - (b). Student's general education ***, ***, ***, and *** teachers provided teacher information [JX23.2];
 - (c). a Speech and Language Pathologist ("SLP") holding a Master's of Science and a Certificate of Clinical Competence in Speech Language Pathology ("MS CCC-SLP"), who obtained information from Student's Parent and teachers and conducted an SLP observation. This SLP conducted the following Informal assessments: Oral Motor Examination, Voice and Fluency Screening, Pragmatics Screening and Speech/Language Sample as well as the following formal assessments: Comprehensive Assessment of Spoken Language - Pragmatic Portion ("CASL"); and the Autism Diagnostic Observation Schedule, Second Edition ("ADOS-2"), Module 3 [JX23.3];
 - (d). Student's medical doctor provided an OHI disability report [JX23.3];
 - (e). Student's Parent provided information [JX23.3];
 - (f). the school nurse conducted a Vision and Hearing Screening [JX23.3]; and

(g). a Licensed Specialist in School Psychology (“LSSP”), holding a Master’s of Arts Degree and a Nationally Certified School Psychology certification (“MA LSSP NCSP”), conducted a psychological evaluation, which included a review of Student’s educational records and referral paperwork; behavior observations; a parent interview; teacher interviews; a Student Interview/Counseling Assessment; the Behavior Assessment System for Children, 3rd edition (“BASC-3”) for Student’s Parent and teacher; the BASC-3 Self-Report for Children; the Adaptive Behavior Assessment System, 3rd edition (“ABAS-3”) for Student’s Parent and teachers; the Autism Diagnostic Observation Schedule, 2nd edition (“ADOS-2”); the ***;³ the *** (“****”)⁴ to Student’s Parent and Teacher; an attempt to administer Projective Drawings; and the Sentence Completion Task [JX23.3].

20. The ARDC reviewed the October 2018 outside evaluation and determined that it did not meet state and federal legal requirements for an evaluation to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs [JX23.14]. The ARDC determined that the outside evaluation was invalid based upon multiple issues:

(a). In making a finding that Student is a student with AU, the assessor failed to conduct campus observations as required by 34 C.F.R. §300.320(a); Student was not evaluated by a multidisciplinary team; and the data collected from questionnaires was not consistent. Student’s Parent and *** rated Student’s behavior within the range expected for AU on the GARS-3 and Asperger’s on the GADS; however, Student’s teacher did not, indicating that the characteristics may not manifest consistently enough for a firm conclusion to be made regarding AU [JX23.14].

(b). In making a finding that Student is a student with an ED, the assessor failed to address Student’s prior testing for AU, which consistently identified Student as a student with an ED, as well as ***. The outside assessor failed to review all of these prior records or discuss how she was able to differentiate between the behaviors associated with AU and ED and ADHD.

(c). Per 22 TEX. ADMIN. CODE §465.38, the outside assessor was not properly credentialed for performing school evaluations.

³ ***.

⁴ The *** assists professionals in screening and classifying students age 3-18 suspected of having significant *** deficits.

21. The ARDC noted that according to the Home Language Survey, English is the only language spoken in the home [JX23.3]; Student's native language is English [JX23.4]; Student's academic language is English [JX23.4]; and Student has **no** limited English proficiency [JX23.4].
22. On February ***, 2019, Student's ARDC met to review Student's FIE dated January ***, 2019 [JX5.1]. The Committee reviewed the speech and language evaluation with the SLP and determined that Student did not qualify for speech and language services [JX5.17]. Student's pragmatic language skills were not characteristic of a child with AU [JX23.6]. Student's language abilities appeared to be intact and age appropriate [JX23.7]. Student evidenced no health concerns other than the OHI disability report submitted by Student's physician [JX23.9]. The Committee also reviewed the AU evaluation with the LSSP and determined that Student did not qualify for services under the AU disability.

The social worker arrived at the ARDC meeting late and missed the SI discussion. She began asking questions about the SI evaluation and was informed that the SI discussion was over. The social worker began questioning the LSSP about Student's "****" as an indicator of AU. The LSSP and Educational Diagnostician stated that "****" was actually a common occurrence in students with ADHD [JX5.18]. The LSSP recommended that the ARDC consider counseling as a related service; however, the Parent informed the Committee that Student was already in private counseling [JX5.18]. The Parent requested an IEE, which was granted. The February ***, 2019, ARDC meeting was tabled pending the outcome of the IEE assessments [JX5.19]. The District agreed to the following independent assessments: Autism Spectrum Disorder, Speech-Language (receptive/expressive/pragmatics); cognition/achievement; and an FBA [JX17.512].

School Year 2019-2020: * Grade**

23. Student's ARDC met on September ***, 2019, which was a continuation of the February ***, 2019, tabled ARDC meeting [JX5.20]. All IEEs requested by the Parent at the February ***, 2019, ARDC meeting were completed. The Committee provided copies of the IEE assessments conducted by ***, dated May *** and ***, 2019; ***, and *** [JX5.20]. The AU assessment was conducted by *** [JX19]. The SI assessment was conducted by *** [JX21]. The FBA was conducted by *** [JX22.586].
24. The District's LSSP reviewed the *** dated May ***, 2019 and May ***, 2019 [JX5.20]. *** administered the ADOS-2, BASC, and Social Responsiveness Scale, Second Edition ("SRS-2"), which was flawed. The creators of the SRS-2 warn that if this test is given to a student with ADHD, it could result in an elevated test score. [R1; T1.223.16-224.14]. The LSSP reviewed the results and finding from ***, indicating diagnostic impressions of AU, ADHD, *** [JX5.21]. The District's LSSP pointed out many problems with the *** IEE, which raised credibility issues [JX20.577]. Collectively, the multiple errors rendered in the *** evaluation deem it less credible than the District's January ***, 2019, FIE.

The District's LSSP reviewed the FBA completed by *** [JX5.21]. The ARDC noted that the behaviors delineated in the outside FBA are consistent with behaviors observed by the District [JX5.21].

25. The District's SLP reviewed the speech evaluation completed by ***. The outside assessor found that Student exhibits moderately severe expressive/receptive language impairment, although Student's articulation, voice, and fluency were within functional limits. The assessor recommended ST services to increase functional communication to help Student communicate in Student's home environment and community [JX21.583]. The assessor recommended some goals for implementation in Student's services plan.⁵
26. These findings conflicted with the District's evaluation, which found that Student's communication skills are adequate and appropriate and that Student's pragmatic language skills are in the average range [JX23.594-597]. They also conflicted with the findings of the *** LSSP, who found that Student's speech was normal and that Student did not use any stereotyped or idiosyncratic speech [JX20.575]. Further, they conflict with the findings of another outside assessor, who found that Student does not have a pragmatic language issue [PX1-58.21; T1.283.I-285.3].
27. Collectively, these conflicts and errors, rendered in the *** evaluation, deem it less credible than the District's January ***, 2019, FIE.
28. The September ***, 2019, ARDC reviewed Student's previous goals and objectives, present levels of academic achievement and functional performance; revised Student's BIP; developed new goals and objectives for Student's behavior and ***; developed accommodations and a schedule of services to include *** instruction twice a week; developed an IEP for Parent Training in the areas of communication, socialization, and behavior; determined that Student was making progress on Student's IEP and that Student's instructional strategies and accommodations were sufficient for Student to make progress in the general education curriculum [JX5.22].
29. The Parent and social worker left the ARDC meeting before its conclusion. The members informed the Parent and social worker that the meeting would continue to completion. The ARDC agreed that Student continues to meet eligibility as a student with an ED and OHI due to ADHD and that Student did not meet eligibility as a student with AU or a SI.
30. The September ***, 2019, ARDC meeting did not reach consensus because the Parent and social worker left prematurely. A few months later, Petitioner filed Petitioner's Complaint with TEA.
31. In conducting its evaluations of Student, the District used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student and did not use any single measure as

⁵ The District's SLP inquired into the Parent's need in obtaining speech services. Parent worried about *** and wanted to address the proposed goals contained in the *** evaluation. The District's SLP informed the Committee that Student had already mastered those goals [JX5.20]. The District's SLP suggested that conversation issues could be addressed through a *** goal, to which the Parent agreed [JX5.20].

the sole criterion for determining the Student's eligibility and developing Student's educational program.

32. The District's assessments and other evaluation materials used to assess Student were selected and administered so as not to be discriminatory on a racial or cultural basis; were provided and administered in the Student's language (English); were used for the purposes for which the assessments or measures are valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with instructions provided by the producer of the assessments.
33. The District assessed Student in all areas of suspected disabilities: AU, OHI, ED, SI, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
34. The District's evaluations were sufficiently comprehensive to identify all of Student's needs for special education and related services.
35. The District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs.
36. The District considered all outside evaluations obtained by the Parent, whether performed at the District's expense (the IEE) or Parent's expense (the October 2018 evaluation).
37. Student qualifies for special education and related services as a student with OHI, for ADHD, and ED. The ARDC correctly found that Student does not qualify for special education and related services as a student with AU or SI.
38. Student's IEP and BIP are reasonably calculated to provide Student with a meaningful benefit: Student's IEP and BIP were individualized based upon Student's assessments and performance; Student's placement is the LRE; Student's program was developed in a coordinated and collaborative manner; and Student has demonstrated progress both academically and non-academically.
39. Prior to the hearing, Student's Parent had never requested the use of a Spanish Interpreter for Student or the Parent.
40. Prior to the hearing, Student's Parent had never indicated that English is not Student's language.
41. None of Student's teachers, staff, or evaluators noted that Student is a second language learner. To the contrary, Student has no limited English proficiency.

V. DISCUSSION

IDEA defines FAPE as special education and related services that (1) are provided at public expense, (2) meet the standards of the state education agency, (3) include an appropriate preschool, elementary school, or secondary school education in the state involved, and (4) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§300.320-324.

The United States Supreme Court established a two-part requirement for determining whether a district has provided a student FAPE: (1) the district must comply with the procedural requirements of IDEA, and (2) the district must design and implement a program reasonably calculated to enable the child to receive an educational benefit. The Court defined “educational benefit” as one that is meaningful and that provides a “basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child.” *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). In a more recent opinion, the Court affirmed that IDEA cannot, and does not, promise any particular educational outcome. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017). The correct standard for providing FAPE is the development of an IEP that is reasonably calculated to enable a student to make appropriate progress in light of the student’s individual circumstances. *Id.* at 999.

In 1997, the Fifth Circuit established a four-factor test to determine whether a school district’s IEP is reasonably calculated to provide a meaningful educational benefit under IDEA: (1) Is the program individualized on the basis of the student’s assessment and performance?; (2) Is the program administered in the LRE?; (3) Are the services provided in a coordinated and collaborative manner by the key stakeholders?; and (4) Does the student demonstrate both positive academic and nonacademic benefits?. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997). These factors were recently re-affirmed by the Fifth Circuit as appropriate under, and consistent with, *E. F. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. It is well-settled that a party challenging the district’s eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d at 754, 762-63 (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).

The party requesting the Due Process Hearing may not raise issues at the hearing that were not raised in the Complaint unless the other party agrees. 34 C.F.R. § 300.511(d).

Student’s core issue is that the District failed to provide Student a FAPE. Student avers that this failure is manifested in the following ways:

- a. The District failed to evaluate Student in all areas of suspected need;
- b. The District failed to consider Student’s Spring 2019 IEE;

- c. The District failed to find that Student is eligible for special education and related services for AU and SI;
- d. The District failed to develop and design an appropriate IEP that addresses all of Student's disabilities, including language deficits and academic concerns.

Based upon the foregoing Findings of Fact, the undersigned SEHO does not concur.

A.
The District Evaluated Student in All Areas of Suspected Need.

The record of this case is replete with evidence showing that the District consistently evaluated Student in all areas of suspected need. From Spring 2014 through Spring 2019, the District performed multiple evaluations in the areas of AU, ED, OHI, SI, as well as evaluations for health, OT, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. Every request by the Parent for an evaluation was provided, whether performed by the District or an outside provider [JX18-22].

On January ***, 2019, Student's ARDC conducted an FIE [JX5.17-18]. The suspected areas were AU, SI, ED, and OHI, areas of concern evaluated by the District multiple times [JX5.93-95].

On February ***, 2019, Student's ARDC met to review this FIE [JX5.1]. The Committee reviewed the speech and language evaluation with the SLP and determined that Student did not qualify for speech and language services [JX5.17]. Student's pragmatic language skills were not characteristic of a child with AU [JX23.6]. Student's language abilities appeared to be intact and age appropriate [JX23.7]. Student evidenced no health concerns other than the OHI disability report submitted by Student's physician [JX23.9].

The Committee also reviewed the AU evaluation with the LSSP and determined that Student did not qualify for services under the AU disability.

At the conclusion of the February ***, 2019, ARDC meeting, Student's Parent requested an IEE [JX5.19]. Her request included the following assessments: cognitive; achievement; adaptive behavior; speech (both expressive and receptive); AU; and an FBA [JX5.19]. There were no other areas of suspected disability espoused by Student's Parent, District personnel, or any of the experts whose opinions were introduced into evidence at the Hearing.⁶

The District clearly evaluated Student in all areas of suspected need. Student's Parent presented no evidence at the Hearing of any other areas of suspected need that were not evaluated and addressed by the District.

⁶ Student's Parent testified that the only areas of suspected disability with which she was concerned were AU and SI [T2.423.12-428.6].

B.
The District Considered Student's Spring 2019 IEE.

On September ***, 2019, the ARDC held Student's annual ARD, which was also the February ***, 2019, reconvened ARD [JX5.17]. The purpose of this meeting was to finalize and accept Student's February ***, 2019, IEP; review the District's January ***, 2019, FIE; and review Student's IEE authorized by the ARDC on February ***, 2019 [JX5.17-23]. The Committee provided copies of the IEE assessments conducted by *** (****), dated May *** and ***, 2019; ***, and *** [JX5.20]. The AU assessment was conducted by *** [JX19]. The SI assessment was conducted by *** [JX21]. The FBA was conducted by *** [JX22.586].

The September ***, 2019, ARDC reviewed Student's IEE in depth as it developed Student's IEP [JX5.19-23; T1.225.17-25; T2.285.9-18; T2.574.20-575.2]. The District's LSSP reviewed the *** IEE dated May ***, 2019, and May ***, 2019 [JX5.20]. *** administered the ADOS-2, BASC, and SRS-2 in evaluating Student for AU. *** made findings that indicated diagnostic impressions of AU, ADHD, *** [JX5.21]. The District's LSSP pointed out many problems with the *** IEE, which raised credibility issues [JX20.577].

The District's SLP reviewed the speech evaluation completed by ***. The outside assessor found that Student exhibits moderately severe expressive/receptive language impairment, although Student's articulation, voice, and fluency are within functional limits. The assessor recommended ST services to increase functional communication to help Student communicate in Student's home environment and community [JX21.583].⁷ The assessor recommended some goals for implementation in Student's services plan.⁸

The District's LSSP reviewed the FBA completed by *** [JX5.21]. The ARDC noted that the behaviors delineated in the outside FBA are consistent with behaviors observed by the District [JX5.21].

Student's ARDC reviewed, considered, and discussed Student's Spring IEE. The ARDC simply did not agree with the resulting opinions.

⁷ These findings conflicted with the District's evaluation, which found that Student's communication skills are adequate and appropriate and that Student's pragmatic language skills are in the average range [JX23.594-597]. They also conflicted with the findings of the *** LSSP, who found that Student's speech was normal and Student did not use any stereotyped or idiosyncratic speech [JX20.575]. Further, they conflict with the findings of another outside assessor, who found that Student does not have a pragmatic language issue [PX.p.21; T2.283.1-285.3].

⁸ The District's SLP inquired into the Parent's need in obtaining speech services. Parent worried about *** and wanted to address the proposed goals contained in the *** evaluation. The District's SLP informed the Committee that Student had already mastered those goals [JX5.20]. The District's SLP suggested that conversation issues could be addressed through a *** goal, to which the Parent agreed [JX5.20].

C.

Student's ARDC Correctly Found That Student Does Not Qualify for AU and SI Services.

IDEA defines "evaluation" as the procedures used to determine whether a student has a disability and the nature and extent of the student's need for special education and related services. These procedures must comport with the requirements of 34 C.F.R. §300.304–300.11 and 300.15. An evaluation under IDEA serves two (2) purposes: (1) it identifies students who need specialized instruction and related services because of an IDEA-related disability; and (2) it helps the ARDC to identify the special education and related services the student requires. *A.W. v. Middletown Area Sch. Dist.*, 115 LRP 4105 (M.D. Pa. 01/28/15). In conducting the evaluation, a district must comply with the following guidelines:

Ensure that the student is observed in his/her learning environment, including the regular classroom setting [§300.310(a)];

Ensure that the student is evaluated by a multidisciplinary team composed of qualified professionals who are knowledgeable in the areas of suspected disability and who are properly licensed to determine the existence of all areas of suspected disability [§§300.304-300.311];

Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student [§300.304(b)(1)];

Not use any single measure or assessment as the sole criterion for determining whether the student is a student with a disability [§300.304(b)(2)];

Ensure that assessment and evaluation materials are used for the purposes for which the assessments or measures are valid and reliable [§300.304(c)(1)(iii)];

Ensure that assessment and evaluation materials are administered by trained and knowledgeable personnel [§300.304(c)(1)(iv)];

Ensure that assessment and evaluation materials are administered in accordance with any instructions provided by the producer of the assessment [§300.304(c)(1)(v)].

There is no presumption in favor of outside evaluators over teachers and other school personnel. *Lisa M v. Leander Independent School District*, 924 F.3d 205, 215 (5th Cir. 2019). Each evaluation must stand on its own merits.⁹ A review of the evaluation documents reveals that the District's January ***, 2019, FIE [JX23] is more credible than the Spring 2019 IEEs conducted by *** [JX19-21].

1. The District's January *, 2019 FIE:**

On January ***, 2019, the District conducted an FIE [JX5.1], which was accomplished by a multidisciplinary team that reviewed Student's October 2018 outside evaluation; assessments conducted for ED (dated November ***, 2017), OHI (dated January ***, 2019), AU (dated January ***, 2019), and SI

⁹ 34 C.F.R. §300.502(e)(1) requires that the location of the evaluation and the qualifications of the examiner must be the same as the criteria that a school district uses when it initiates an evaluation.

(dated January ***, 2019) [JX5.1]. The District's multidisciplinary team included the following: (1) an M.Ed., Educational Diagnostician; (2) Student's general education ***, ***, ***, and *** teachers [JX23.2]; (3) a SLP holding a Master's of Science Degree and a Certificate of Clinical Competence in Speech Language Pathology ("MS CCC-SLP"); (4) Student's medical doctor (who provided an OHI disability report [JX23.3]); (5) Student's Parent [JX23.3]; (6) the school nurse (who conducted a Vision and Hearing Screening) [JX23.3]; and (7) a LSSP, holding a Master's of Arts Degree and a Nationally Certified School Psychology certification ("MA LSSP NCSP") [JX23.3].

a. The District's January *, 2019, Speech/Language FIE:**

The District's SLP obtained information from Student's teachers; conducted a SLP observation; and conducted both informal and formal evaluations. According to the Oral and Written Language Scales, Second Edition ("OWLS-II FORM A"), Student's receptive and expressive language skills are in the average range [JX23.595].¹⁰ The ADOS-2 MODULE #3 revealed that Student's pragmatic language skills are not characteristic of a child with AU [JX23.595-597].¹¹ The CASL-2 (pragmatic language subtest) revealed that Student's pragmatic language skills are in the average range [JX23.596].¹²

b. The District's January *, 2019, Formal Academic Evaluation:**

The District's Educational Diagnostician ("ED") reviewed Student's records, including information from Student's educational records, report cards, state/district assessments, Home Language Survey, previous District FIEs, and the hearing/vision screening conducted by the school nurse. The ED administered the Wechsler Individual Achievement Test III ("WIAT-III"), which is a set of individually administered tests that measure academic achievement in reading, mathematics, written language, listening, and speaking skills. Student's scores were in the average range; the ED opined that Student's scores appeared to accurately reflect Student's ability in each area [JX23.616-18].

c. The District's January *, 2019, Psychological Evaluation:**

The District's LSSP conducted a Psychological Evaluation of Student, which included (1) a review of educational records; (2) behavior observations of Student two (2) times on two (2) different days [JX23.605]; (3) a Parent interview; (4) teacher interviews; and (5) a Student Interview/Counseling Assessment [JX23.601]. The LSSP reviewed Student's previous FIEs from March 2014 [JT.33], November ***, 2014 [JX27], and November ***, 2017 [JX26].

¹⁰ The OWLS-II is a norm-referenced, theoretically based, and individually administered assessment of receptive and expressive language for children and young adults. Student scored in the average range on each subtest [JX23.595].

¹¹ The ADOS-2 Module 3 is a semi-structured, standardized assessment of communication, social interaction, and play or imaginative use of materials for individuals who have been referred for an autism-spectrum disorder [JX23.596]. Module 3 is administered to verbally fluent children and young adults [JX23.596].

¹² The CASL-2 is a norm-referenced oral language assessment. The Pragmatic Language Subtest measures the knowledge and use of pragmatic rules of language, which is assessed by the assessor's questioning the student to express a specific communication intent; to recognize appropriate topics for conversation; to select relevant information for directions or requests; to use language for expressing gratitude, sorrow, and other feelings; and to judge the pragmatic appropriateness of the language behavior of others [JX23.596].

The District's LSSP reviewed a private evaluation, which was conducted in October 2018 and submitted to Student's ARDC [JX25].¹³

The District's LSSP administered a variety of assessments: (1) the ***, which could not be scored due to a computer software failure [JX23.605];¹⁴ (2) the BASC-3; (3) the ADOS-2; (3) the Childhood Autism Rating Scales, Second edition (CARS-2); and (4) the *** [JX23.607-08].

The BASC-3 assesses social and emotional problems in children and youth. Teacher ratings indicated minimal difficulties in the classroom; some attention and/or disconnection problems. These issues were rated within the "At Risk" range. However, these results showed that Student was having minimal difficulties, which was a significant improvement from previous years [JX23.606].

During the ADOS-2 (see fn 11) the LSSP noted that Student speaks in complete, grammatically correct sentences; Student's eye contact is fluid and appropriate, although Student's***; Student demonstrates no stereotyped or repetitive behaviors; Student did not engage in compulsive or ritualistic behavior; Student did not exhibit any unusual motor movements; and Student did not exhibit any sensory captivation or defensiveness [JX23.607].

The CARS-2 is a behavior rating scale that identifies the severity of fourteen (14) categories of behavior associated with AU: verbal and nonverbal communications, taste, smell and touch response and use, object use, body use, and relating to people. A fifteenth (15) item gives a general impression of the severity of AU-Spectrum characteristics. The LSSP showed that Student's scores were in the minimal-to-no-symptom range [JX23.607].

The *** is a self-report questionnaire designed to assess for a variety of emotional and behavioral issues. Student's responses resulted in elevations in ***, which are consistent with Student's prior diagnoses of *** [JX.23.607-08].

d. The Multidisciplinary Team:

The multidisciplinary team received teacher input from Student's general education *** teacher, general education *** teacher, general education *** teacher, general education *** and *** teacher [JT23.593 & 30.814-17].

The multidisciplinary team received an OHI report from Student's physician, which showed Student has ADHD [JX23.628].

The multidisciplinary team received input from the Student's mother [JX23 & 30.807-14].

The multidisciplinary team received input from a District Behavior Specialist, who is a former special education teacher. He conducted an observation of Student throughout one day. He observed

¹³ The ARDC did not accept this outside evaluation because the assessor was not properly credentialed and licensed to conduct the evaluation. Additionally, this assessor did not conduct the evaluation in compliance with the test's instructions [JX23.604-05].

¹⁴ The *** is a behavioral questionnaire designed to assess for a variety of ***, including *** This test assesses for ***.

Student in Student's classrooms, the lunch room, and the hall. The Behavior Specialist noted that Student exhibited very little difference in presentation and behavior than Student's peers. Student had no problem navigating from class to class, interacting with Student's peers, and had no speech difficulties or idiosyncrasies. The Behavior Specialist testified that Student did not present as a student with AU [T2.321.15-323.24].

The multidisciplinary team received input from two (2) of Student's teachers, who testified in support of the District's January ***, 2019, FIE and September ***, 2019, IEP. Student's *** testified that Student was always respectful and cooperative; Student got along with other ***; Student had minimal discipline issues and always responded appropriately and maturely; Student initiated jokes and conversations with other students; Student was able to move from setting to setting and *** without assistance; Student progressed *** throughout the year [T2.540.23-544.22].

Student's *** teacher, who had worked at a behavioral training center that specialized in working with students with AU, testified in support of the District's January ***, 2019, FIE and September ***, 2019, IEP. He testified that Student passed his class; he had very minor disciplinary issues with Student; Student showed positive improvement and success in his class; Student engaged in reciprocal conversations with other students; and Student had friends [T2.548.21-549.25]. In his opinion, Student did not present as a student with AU [T2550.22-552.11].

In conducting its evaluations of Student, the District used technically sound instruments to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The District used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student and did not use any single measure as the sole criterion for determining the Student's eligibility and developing Student's educational program.

The District's assessments and other evaluation materials were selected and administered so as not to be discriminatory on a racial or cultural basis; were provided and administered in the Student's language (English); were used for the purposes for which the assessments or measures are valid and reliable; were administered by trained and knowledgeable personnel; and were administered in accordance with instructions provided by the producer of the assessments.

The District assessed Student in all areas of suspected disabilities: AU, OHI, ED, SI, OT, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The District's evaluations were sufficiently comprehensive to identify all of Student's needs for special education and related services. The District's assessment tools and strategies provided relevant information that directly assisted Student's ARDC in determining Student's educational needs.

2. Student's Spring 2019 IEE:

In February 2019, Student's ARDC authorized a psychological IEE for Student, per Student's Parent's request. Student's Parent chose *** to perform this IEE [JX18-20].

a. The * IEE:**

The *** LSSP evaluated Student in one (1) day. She administered the ADOS-2, BASC, and SRS-2 [T2.390.1-5]. *** found diagnostic impressions of AU, ADHD, *** [JX5.21]. *** determined that Student qualified for special education services as a student with AU, OHI, and ED [JX20.577].

At the September ***, 2019 ARDC meeting, members of the District's multidisciplinary team noted serious problems with the *** evaluation:

- a. Since November 2017, all of Student's evaluations have found that Student has an OHI and ED. However, the *** assessor determined that Student qualified for special education and related services as a student with AU, OHI, and ED [JX20.577]. The District's LSSP and the *** LSSP acknowledged that AU and ADHD share common symptoms [T1.215.10-216.21; T2.386.9-387.14].
- b. The *** LSSP conducted her evaluations of Student in one (1) day starting at 9:00 a.m. and finishing at 3:00 p.m. [T2.390.1-5]. Administering so many evaluations in such a brief time is inappropriate for a student with ADHD [T1.217.17-218.5].
- c. The *** LSSP did not conduct a separate student interview [T1.218.18-23]. She did not observe Student in Student's classroom [T1.221.18-20; T2.400.14-17]. She had no contact with Student's teacher other than receiving a questionnaire (T2.391.4-8).
- d. The first evaluation that the *** LSSP sent to the District had multiple errors [JX18 & 19; T2.302.17-20], which necessitated the LSSP's delivery of a correct evaluation. That corrected evaluation was received by the District one (1) hour before the ARDC meeting [T1.228.22-229].
- e. The assessment was not administered correctly and in the manner provided by the test creator.
- f. The *** LSSP was unaware of federal regulations that states AU does not apply if a student's educational performance is adversely affected because the student is ED [T2.391.9-392.11].
- g. Although the *** LSSP found that Student manifested multiple disabilities, when she administered the ADOS-2, she did not administer the E-codes.¹⁵
- h. The *** LSSP was unaware that the creators of the SRS-2 warn that if this test is given to a student with ADHD, it could result in an elevated test score [T1.223.16-224.14].
- i. The *** evaluation was not conducted by a multidisciplinary team [T1.229.4-6].

¹⁵ These codes are designed to assist the evaluator in making a differential identification when behaviors that are associated with multiple disorders are present in a student [T1.223.4-10]. Failure to give the E-codes is a significant omission in evaluating a student with multiple disabilities.

- j. The *** LSSP performed no formal language assessment but determined that Student needed speech therapy [T2.288.7-22; JX20.578].

The *** LSSP's failure to conduct a classroom observation was not in compliance with 34 C.F.R. §300.310(a). She determined that Student suffered from an ED in violation of 34 C.F.R. §300.8(c)(1) ("Autism does not apply if a child's educational performance is adversely affected because the child has an emotional disturbance.") [JX.391.9-392.11]. These errors render the *** IEE both deficient under IDEA and less credible than the District's FIE.

b. The * SL IEE:**

Student's Parent chose *** to perform a speech and language IEE [JX21]. *** administered the Parent interview and Report, the Comprehensive Assessment of Spoken Language Second Edition ("CASL-2"), the Goldman-Fristoe Test of Articulation Third Edition ("GFTA-3"), and informal speech/language samples [JX21.580].

The GFTA-3 was administered to formally measure Student's articulation of consonant sounds, determine the types of misarticulation and compare individual performance to national, gender-differentiated norms. Student scored in the ***, which is within the functional limit for Student's age and gender [JX21.581].

The CASL-2 was administered to determine the nature of Student's disability and Student's strengths and weaknesses with subtests to obtain receptive and expressive language scores [JX21.582]. Student showed strengths in the areas of participation, cooperation, receptive vocabulary, and strong family support. Student displayed weaknesses in wording finding, age appropriate vocabulary, sentence expressions, grammar, and understanding nonliteral language and multiple meaning words [JX21.583].

The *** IEE determined that Student exhibits moderately severe expressive/receptive language impairment and recommended speech therapy to improve Student's expressive and receptive language skills. The *** SLP drafted some suggested ST goals [JX21.584].

These findings conflicted with the findings in (1) the District's speech and language evaluation, which found that Student's communication skills were adequate and appropriate and that Student's pragmatic language skills are in the average range [JX23.594-97]; (2) the *** determination that Student's speech was normal and that Student did not use any stereotyped or idiosyncratic speech [JX20.575]; and an outside evaluation, presented by Student's Parent, which found Student does not have a pragmatic language issue [PX.page.21; T2.283.1-285.3].

***' evaluation contained several errors. Although listed as a potential assessment, the SLP did not report a conversation or language sample. The SLP did not observe Student in the classroom. The SLP evaluated Student in only one (1) session [JX21]. The evaluation should be administered over a period of several days for a student with ADHD [T2.286.9-287.13].

Upon receipt of this recommendation, the District's SLP met with Student and determined that Student had already mastered all of the goals suggested by *** [T2.285.9-18].

Student introduced no evidence that Student's IEEs were not appropriately reviewed and considered by Student's ARDC. It is noted that Student's Parent and social worker walked out of the September ***, 2019, ARDC meeting prior to its completion. Student's Parent and social worker did not observe the ARDC's review of all of the evaluations; accordingly, they should not complain about factual events in which they refused to participate.

D.

Student's ARDC Developed an Appropriate IEP That is Reasonably Calculated to Enable Student to Receive Educational Benefits.

The well settled method for determining whether a school district's IEP is reasonably calculated to provide a meaningful educational benefit originated in the Texas case of *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997). The method utilizes a four-factor test: (1) Is the program individualized on the basis of the student's assessment and performance?; (2) Is the program administered in the LRE?; (3) Are the services provided in a coordinated and collaborative manner by the key stakeholders?; and (4) Does the student demonstrate both positive academic and nonacademic benefits? In utilizing this method, it is patently clear that Student's 2019-20 IEP is reasonably calculated to provide Student a meaningful educational benefit.

In designing Student's individualized program, the September ***, 2019, ARDC reviewed prior evaluations, its January 2019 FIE, and Student's Spring 2019 IEE. The Committee reviewed Student's previous goals and objectives and present levels of academic achievement and functional performance; revised Student's BIP; developed new goals and objectives for Student's behavior and ***; developed accommodations and a schedule of services to include *** instruction twice a week; developed an IEP for Parent Training in the areas of communication, socialization, and behavior; determined that Student was making progress on Student's IEP and that Student's instructional strategies and accommodations were sufficient for Student to make progress in the general education curriculum, with pull-out for ***. This placement is the LRE for Student [JX5.22].

Based upon Student's evaluations, the District's LSSP recommended that Student continue special education eligibility as a Student with an ED. The physician diagnosed Student as OHI for ADHD. Notwithstanding the fact that Student's Parent and social worker walked out of the meeting, the Committee continued its four factor assessment and found that Student's evaluations and behaviors did not evidence AU or SI impairments, a finding that had been made following every District assessment since 2014.

Student's services have been planned and provided in a coordinated and collaborative manner by the key stakeholders. Student's Parent was present at every ARDC meeting since 2014 and she agreed with the ARDC's IEPs until February 2019.¹⁶ The District accommodated the Parent's every request for assessments and meetings. The District readily agreed to the Parent's request for IEEs. The Parent likewise cooperated with evaluators in conducting Student's FIEs and IEEs.

¹⁶ At no time during any of the ARDC meetings did the Parent notify the District that she could not be a collaborative member due to her need for a Spanish Interpreter. Indeed, every ARDC report, assessment, notice, questionnaire, and meeting verified that English is the primary language in Student's home. Notwithstanding the fact that the Parent lodged this latent language barrier issue during the Hearing, it was not an issue presented in the Complaint and as such, it was not a live issue in this case. 34 C.F.R. § 300.511(d).

Student's behaviors at school have vastly improved. Student participates in ***. Student's *** testified that Student is always respectful and cooperative; Student gets along with other ***; Student has minimal discipline issues and always responds appropriately and maturely; Student initiates jokes and conversations with other students; Student is able to move from setting to setting and *** without assistance; Student has progressed ***.

Student's *** teacher testified that Student passed his class; he has very minor disciplinary issues with Student; Student shows positive improvement and success in his class; Student engages in reciprocal conversations with other students; and Student has friends.

Based upon the results of Student's multiple evaluations, observations, and academic and non-academic success in the general education setting, the September ***, 2019, IEP meets the requirements of the four-factor test. This IEP is reasonably calculated to provide Student a meaningful educational benefit as Student progresses in Student's educational program.

VI. CONCLUSIONS OF LAW

1. Student is eligible for a free, appropriate public education. U.S.C. §1400, et seq., 34 C.F.R. §300.301 and 19 TEX. ADMIN. CODE §89.1011.
2. The District is responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA. 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.
3. Student had the burden, but failed, to prove that the District did not evaluate Student in all areas of suspected need. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).
4. Student had the burden, but failed, to prove that the District did not consider outside evaluations. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).
5. Student had the burden, but failed, to prove that Student qualified for special education and related services for Autism and Speech Impairment. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997).
6. Student had the burden, but failed, to prove that the District did not develop and design an appropriate IEP reasonably calculated to provide Student a meaningful educational benefit. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997).

