

DOCKET NO. 157-SE-0317

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|-----------------------------------|---|----------------------------------|
| STUDENT | § | BEFORE A SPECIAL DUCATION |
| b/n/f PARENT & PARENT | § | |
| Petitioner | § | |
| | § | |
| v. | § | HEARING OFFICER FOR THE |
| | § | |
| LUBBOCK-COOPER INDEPENDENT | § | |
| SCHOOL DISTRICT | § | |
| Respondent | § | STATE OF TEXAS |

DECISION OF THE HEARING OFFICER

STUDENT, by next friends Parents (hereinafter Petitioner or Student) requested an impartial due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* Lubbock-Cooper Independent School District is the Respondent to the complaint.

I. PROCEDURAL HISTORY

Petitioner filed the complaint with the Texas Education Agency (TEA) on March 16, 2017, and the case was assigned to this hearing officer on that date. The First Scheduling Order in this matter was issued on March 17, 2017, setting this case for a hearing on April 20, 2017. The initial prehearing conference in this matter was convened on April 4, 2017. The parties agreed to set aside one day for hearing, and the hearing was reset for May 22, 2017. A deadline of June 30, 2017 was set for post- hearing briefs. The decision due date was set for July 31, 2017. Petitioner thereafter requested and was granted an extension to the post hearing brief and decision due date deadlines. The post- hearing brief deadline was extended to July 14, 2017. The decision due date was re-set as August 14, 2017.

The hearing convened on May 22, 2017 at the Lubbock-Cooper Independent School District in Lubbock, Texas. Sonja Kerr and Idris Motiwala represented Petitioner. Abraham Barker, Amy Foster and Holly Wardell represented Respondent.

II. ISSUES AND PROPOSED RELIEF

A. Issues

A pre-hearing conference in this matter was held on May 3, 2017. Petitioner confirmed the relevant time period for this case is the 2016-2017 school year and ongoing.

In the complaint, Petitioner alleges that Respondent denied Student a free appropriate public education (FAPE) and raised the issues below, which were noted in the *Order Following May 3rd Pre-hearing Conference* dated May 3, 2017:

1. Whether Respondent failed to provide Student with a FAPE in the least restrictive environment (LRE) within the meaning of the IDEA during the 2016-2017 school year and ongoing.
2. Whether Respondent relied upon an insufficient March 2016 Full Individual Evaluation (FIE) which identified Student as Other Health Impairment (OHI) based upon Attention Deficit Hyperactivity Disorder (ADHD), and failed to identify Student as having a Specific Learning Disability (SLD).
3. Whether during the period of August through October of 2016, the August 2016 Individualized Education Program (IEP) was deficient and inappropriate and did not meet the requirements of 20 U.S.C. 1414(d), and the related regulations, or 19 Texas Administrative Code, Chapter 89 in that: (a) The August IEP did not include clear present levels of performance to coincide with the goals and objectives; (b) The goals and objectives did not meet Student's needs; (c) The August 2016 IEP lacked any ***, and no *** evaluation was completed for Student; (d) The August 2016 IEP lacked extended school year (ESY) services; (e) The August 2016 IEP failed to provide speech and language services to Student; (f) The August 2016 IEP did not include meaningful present levels of performance in the *** area, or goals and objectives in the *** area,
4. Whether the October 2016 IEP is deficient and did not meet the requirements of 20 U.S.C. 1414(d) and the related regulations, or 19 Texas Administrative Code, Chapter 89 in that: (a) It fails to recognize Student as having a SLD and language deficits; (b) The October IEP did not include clear present levels of performance to coincide with the goals and objectives; (c) The goals and objectives did not meet Student's needs; (d) The October 2016 IEP lacked any *** and no *** evaluation was completed for Student; (e) The October 2016 IEP denied Student ESY services for 2017; (f) The October IEP failed to provide speech and language services to Student; (g) The October IEP did not include meaningful present levels of performance in the *** area, goals and objectives in the *** area, or a coordinated set of *** to help Student in the *** area.
5. Whether Respondent failed to ensure that Student had an individualized program provided in the least restrictive manner as required by the IDEA during the 2016-2017 school year and ongoing.
6. Whether Respondent failed to have staff on Student's ARDC/IEP team that were trained in peer reviewed, research based programming for children with a SLD in reading, including reading comprehension, resulting in the ARDC/IEP team's inability to appreciate the necessity and importance of these critical services for Student.
7. Whether Respondent failed to ensure that staff on Student's ARDC/IEP team were trained in determining whether a student needs ESY services, and whether Respondent has an illegal policy and practice of routinely denying ESY services to children.
8. Whether during the 2016-2017 school year and ongoing, Respondent failed to properly evaluate Student as having a SLD.

9. Whether during the 2016-2017 school year, Respondent failed to provide Parents with prior written notice (PWN) pursuant to the IDEA, resulting in a denial of a FAPE.
10. Whether after the August 2016 Admission, Review, and Dismissal (ARD) meeting, Respondent failed to provide Parents with any PWN it would not be identifying Student as having a SLD in reading comprehension until after Parent wrote to Respondent in September of 2016.
11. Whether Respondent failed and is continuing to fail to comply with all procedural requirements of the IDEA and Texas law including provision of PWN, and by doing so has impeded Student's right to FAPE, and has significantly impeded Parents opportunity to meaningfully participate in the decision- making process regarding the provision of a FAPE to Student, and has this impeded or caused a deprivation of a FAPE to Student.

In the complaint, Petitioner asserted claims for relief arising under Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act (ADA). These claims and requests were dismissed for want of jurisdiction on May 3, 2017.

B. Proposed Remedies

Petitioner requested that the hearing officer order the following relief, which was noted in the May 3, 2017 Order:

1. Order that Respondent denied Student with a FAPE during the 2016-2017 school year and ongoing.
2. Order that Respondent's August of 2016 ARD/IEP denied Student a FAPE for the 2016-2017 school during August, September and October of 2016.
3. Order that Respondent's October 2016 IEP/ARD denied and continues to deny Student a FAPE for the 2016-2017 school year and ongoing.
4. Order that Respondent: (a) hire a *** (***) to teach Student and assist Student with Student's reading comprehension for no less than *** per day; (b) hire an individual qualified to evaluate Student in the area of *** needs and follow the recommendations of that evaluator concerning ***; (c) require Respondent to utilize a certified special education teacher to assist Student in Student's *** for at least *** minutes per week; (d) provide Student direct language therapy at least *** minutes per week to help with Student's language deficits.
5. Order Respondent to pay for Student to receive peer reviewed appropriate direct instruction at school from a ***, to teach and assist Student with Student's reading comprehension for no less than *** per day pending the implementation of any relevant Order from the hearing officer.
6. Order Respondent to provide Student with compensatory education services in the amount equal to Student's loss of education during the 2016-2017 school year, and that Parents may secure these privately at a reasonable market rate in the Lubbock area.

7. Order that Student will be provided private services by a qualified provider of Parents choice at a mutually agreed location.
8. All other relief that may be appropriate.

III. BURDEN OF PROOF

The IDEA creates a presumption that school district decisions made pursuant to the IDEA are appropriate, and the party challenging the decisions bears the burden of proof at all times.¹ Petitioner bears the burden of proof on all issues raised in Petitioner’s complaint. The burden of proof in this matter is by preponderance of the evidence.²

IV. FINDINGS OF FACT

Based upon the evidence presented at hearing pertaining to the above-listed issues, this hearing officer makes the following findings of fact and conclusions of law. Citations to the transcript are designated as “Tr.” followed by the page number(s). Citations to exhibits are designated as “PE” for Petitioner, and “RE” for Respondent, followed by the exhibit number.

1. Student is *** years old and resides in the District. Student was born in ***.³
2. Student transferred into the District in August of 2016 from the *** (***) for the 2016-2017 school year.⁴ Student began school in the District on August ***, 2016. During the 2016-2017 school year, Student was in the *** grade.⁵ Student was ***.⁶
3. When Student moved into the District, Student had an IEP from ***.⁷ While a Student at ***, Student received 504 accommodations for dyslexia and ADHD.⁸ Student was diagnosed by physician *** with ***.⁹

¹ *Schaffer ex rel. v. Weast*, 546 U.S. 49 (2005).

² 20 U.S.C. §1415(i).

³ PE19.

⁴ Tr. at 168.

⁵ RE1.

⁶ PE3 at 1; RE13 at 167.

⁷ RE2.

⁸ RE13 at 168.

⁹ RE13 at 231.

4. In May of 2015, Student received a neuropsychological evaluation from Dr. ***. Dr. *** is a Licensed Psychologist and Clinical Neuropsychologist.¹⁰ Dr. *** determined that Student met criteria for Reading Disorder based on poor reading comprehension. She also diagnosed Student with *** in the DSM-5. Dr. *** confirmed Student's pre-established diagnosis of ***.¹¹
5. Dr. *** recommended that Student participate in speech therapy for *** and *** to help ***, and indirectly improve *** ***.¹²
6. *** through *** (***) conducted a FIE of Student. The FIE report is dated March ***, 2016.¹³ The FIE notes that Student is ADHD and has ***.¹⁴ The report also identifies Student as being dyslexic.¹⁵ Although *** had concerns about Student's reading comprehension and math problem solving, Student was determined to not meet eligibility for a SLD.¹⁶
7. When Student transferred into the District, Respondent was aware Student had problems with reading comprehension and had received *** reading assistance at ***. While at ***, Student's teacher *** noted Student had difficulty ***, and did not *** when Student reads and studies. Ms. *** further noted that the methods she used with Student did not work for Student, but had worked for other students who struggled with reading.¹⁷ Student's math teacher at *** noted Student struggles with comprehension of *** and ***.¹⁸
8. Dr. ***, a Licensed Psychologist and Licensed Specialist in School Psychology (LSSP), evaluated Student in April of 2016.¹⁹ Dr. *** concluded that Student had severe ADHD and a SLD.²⁰ She recommended for school purposes that Student be classified with ADHD, and with a secondary presence of a SLD in reading comprehension. She noted Student had *** and ***.²¹
9. The IDEA defines a SLD as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. SLD does not include learning problems that are primarily the result of visual, hearing, or

¹⁰ PE5.

¹¹ PE5.

¹² PE5 at 5.

¹³ RE13.

¹⁴ RE13 at 167, 174, 231.

¹⁵ RE13 at 209.

¹⁶ RE13 at 209-212, 228.

¹⁷ RE13 at 210.

¹⁸ RE2 at 8.

¹⁹ PE3.

²⁰ Tr. at 340.

²¹ PE3 at 18.

motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.²²

10. Dr. *** tested Student **. Student can have attention problems even though Student **.²³ Dr. *** concluded Student's reading comprehension disability is the result of a problem with Student's ** and **. ²⁴ The ** reading comprehension that Student presents with is **. Dr. *** theorized if Student had **. ²⁵
11. Dr. *** concluded that Student demonstrated an overall General Intellectual Ability Composite of SS **. In addition to having severe ADHD, Student presented with a SLD in reading comprehension because of a ** *. ²⁶ Student's ability in terms of reading comprehension was considered to be in the borderline range. ²⁷ "Borderline" is a degree of moderate weakness and is well outside of what would be considered as a normative area of functioning for a child with an average intellectual skill set. ²⁸
12. Petitioner notified Respondent of Dr. ***'s evaluation of Student in May and September of 2016. ²⁹
13. Parents paid Dr. *** for her services. Dr. *** charges \$*** per hour. ³⁰

August 2016 IEP

14. An Admission Review and Dismissal Committee (ARDC) meeting was scheduled on August **, 2016. On August **, Parent asked Respondent for a copy of the draft goals and objectives for Student's IEP to assist her in preparing for the August ** ARDC meeting. ³¹ On August ** Respondent had a "staffing." "Staffings" are meetings held by Respondent outside the ARDC meeting. ³² The draft goals and objectives which were prepared by the special education teacher were thereafter provided to Parent. ³³
15. An ARDC meeting was convened on August **, 2016. The ARDC considered Dr. ***'s April **, 2016 report. However, Respondent determined Student met the eligibility criteria only for Other Health Impairment (OHI) as a result of Attention Deficit Hyperactivity Disorder (ADHD). ³⁴

²² 34 C.F.R. §300.8.

²³ Tr. at 342-343.

²⁴ Tr. at 340-342, 349.

²⁵ Tr. at 360.

²⁶ Tr. at 340.

²⁷ Tr. at 345.

²⁸ Tr. at 345.

²⁹ PE42 at 42, 67.

³⁰ PE67; RE26 at 788-789.

³¹ PE39 at 32.

³² Tr. at 459-462.

³³ RE26 at 1079.

³⁴ RE3.

Respondent also determined speech therapy services were not to be provided.³⁵ Respondent further determined Student would be instructed in the general education setting in all subjects with support in the ***.³⁶ It was concluded Student did not need assistive technology (AT) or extended school year (ESY) services.³⁷ This IEP went into effect.³⁸

16. During the August *** ARDC meeting, Parent raised a concern as to why Respondent was not recommending eligibility on a SLD. Respondent did not address this concern.³⁹ *** is a LSSP who is employed by Respondent. She attended the ARDC meeting and reviewed Dr. ***'s report.⁴⁰ She also reviewed Dr. ***'s report as well as the *** FIE.⁴¹ She did not believe Student qualified for services as a student with a SLD.⁴²
17. *** is a *** who is employed by Respondent.⁴³ During the August *** ARDC meeting, she communicated she was reviewing *** and would be working with Student during the upcoming year.⁴⁴ Ms. *** was to meet with Student and complete some ***, ***, and ***. *** were to be reviewed again in the spring.⁴⁵ ***.⁴⁶ ***.⁴⁷
18. Parents never received the *** prior to the August *** ARDC meeting.⁴⁸ Prior to that meeting, Student's father did not have much of an understanding of ***.⁴⁹ Student did not receive *** prior to August ***, 2016.⁵⁰ Parent believes he lost an ability to know the process existed, and the ability to tell Respondent any concerns regarding Student's ***.⁵¹ Parent believes he lost an ability to participate in the process. It would have been valuable for Parent to know that *** existed. Parent believes he was left out of the process.⁵²
19. When *** was addressed, Student was noted as being ***.⁵³ Student was ***.⁵⁴

³⁵ RE3 at 32.

³⁶ RE3 at 35.

³⁷ RE at 35-36.

³⁸ Tr. at 70.

³⁹ RE3 at 34.

⁴⁰ RE3 at 34.

⁴¹ Tr. at 436-437.

⁴² RE3 at 34.

⁴³ Tr. at 69.

⁴⁴ RE3 at 35.

⁴⁵ RE3 at 41.

⁴⁶ PE31.

⁴⁷ Tr. at 72- 73.

⁴⁸ Tr. at 154.

⁴⁹ Tr. at 154.

⁵⁰ Tr. at 155.

⁵¹ Tr. at 156-158.

⁵² Tr. at 158.

⁵³ RE3 at 35.

⁵⁴ RE3 at 41.

20. During the August *** ARDC meeting, Special Education Teacher *** stated that Student was in the upper *** to lower *** grade reading level as Student was entering *** grade. She tested Student with a test only going up to the *** grade.⁵⁵
21. The August *** IEP had two goals.⁵⁶ Goal 1: By the end of the (2016-2017) school year, when given assignments and tests Student will *** with 70% accuracy. Goal 2: By the end of the (2016-2017) school year, Student will establish and maintain *** and verified by special education staff *** days of the week.
22. The August *** IEP provided for the following services:⁵⁷

| IEP Services/Supports | Location | Frequency and Duration/Per Cycle | Start Date & End Date |
|-----------------------|-----------------------------------|----------------------------------|-----------------------|
| In Class Support-*** | General Education Classroom-Group | *** minutes, *** times per week | *** to *** |
| In Class Support-*** | General Education Classroom-Group | *** minutes, *** times per week | *** to *** |

23. From August ***, 2016 to September ***, 2016, Student's mother emailed Respondent multiple times requesting the present level of academic achievement and functional performance (PLAAPF) for the August *** ARD, asking about the ***, sending draft goals and accommodations that Petitioner's advocate developed, and requesting the entire ARD document and PWN.⁵⁸
24. On September ***, 2016, Parents notified Respondent that they were in disagreement with the previous ARD.⁵⁹ Parents wanted specific information as to why LSSP *** reported to the ARDC that Dr. ***'s evaluation was based on a medical diagnosis versus an academic diagnosis when Dr. *** identified Student as a child with a learning disability. Parents also wanted to know why ***. Parent wanted an explanation as to why she was not receiving requested information regarding Student.⁶⁰
25. On September *** Parent requested Respondent provide to her information as to why Respondent failed to accept Dr. ***'s diagnosis for Student as a child with a learning disability. Parent reminded Respondent that she had provided Respondent with past State of Texas Assessment of Academic Readiness (STAAR) results that demonstrate failure to meet progress, and 2 psychological evaluations that demonstrate Student had a learning disability and was having difficulty in the classroom.

⁵⁵ PE54 at 43, 48.

⁵⁶ PE18 at 4-5.

⁵⁷ PE18 at 11.

⁵⁸ RE26 at 627, 785, 792.

⁵⁹ PE26.

⁶⁰ PE20 at 3.

Teachers were requiring Student to take notes while continuing to try to pay attention. Parent indicated she wanted this information to help prepare for the October *** ARDC meeting.⁶¹

26. On September ***, 2016, Respondent declined to add the additional special education eligibility of a SLD in reading comprehension taking the position Student did not meet the eligibility criteria for a SLD. Respondent stated that the ARDC neither refused nor accepted the Independent Educational Evaluations (IEE).⁶² Respondent notified Parents that Respondent did not see evidence of any other area of deficit not addressed by Student's eligibility of OHI-ADHD. The notice went on to indicate that based on the federal definition of a learning disability and the understanding that a normative weakness identified in educational testing would be any factor standard score of 85 or below, the evaluation staff determined Student did not meet the eligibility of a SLD. Respondent noted they relied on the *** assessment with Student as one source of information to help identify Student's strengths, weaknesses, and competencies in order to determine appropriate educational strategies.⁶³
27. On September ***, 2016, Special Education Director *** (SPED) notified Student's mother that she did not have the email address of Student's father.⁶⁴ On the same date Student's father emailed Respondent the PWN was untimely and failed to fully and completely explain in plain terms the reason for the disagreement.⁶⁵

October 2016 IEP

28. On October ***, 2016, an ARDC meeting was held. Dr. *** attended this meeting.⁶⁶ Respondent again determined Student met eligibility for services as a Student with OHI.⁶⁷ Respondent did not give Dr. *** or Parents a copy of the educational plan when they left the meeting, which Dr. *** found unusual.⁶⁸
29. On October ***, 2016, Parent notified Respondent she was dissatisfied with Respondent's proposed IEP. Parent expressed concern about having to *** to attend the ARDC meeting when Respondent could have ***.⁶⁹
30. On October ***, 2016, a reconvene ARDC meeting was held.⁷⁰ No special education teacher who knew Student attended.⁷¹ At the October *** ARDC meeting there was no access to the internet for purposes of reviewing the IEP electronically. Student's mother asked why she never receives the

⁶¹ PE20 at 4.

⁶² PE20 at 8.

⁶³ PE20 at 9.

⁶⁴ RE26 at 799.

⁶⁵ PE20 at 11.

⁶⁶ RE26 at 789

⁶⁷ RE5.

⁶⁸ Tr. at 352-353.

⁶⁹ RE26 at 789-791.

⁷⁰ RE5.

⁷¹ PE58 at 10-13.

complete ARD documents.⁷² Parent expressed concern Student’s success in completing *** on a *** grade level was not independent, but rather it was with the accommodations of teacher *** and ***.⁷³ During the ARDC meeting Principal *** informed Parent special education teachers are strategy specialists, but Student does not have a strategy specialist for *** or *** because Respondent has limited personnel.⁷⁴ Options for Student were to move to a larger class of *** students with an inclusion teacher or a smaller class without one.⁷⁵ Respondent acknowledged Student’s executive and intentional focusing issues could be worse in a large class.⁷⁶

31. Of the two goals from the August IEP, the first goal was changed at the October ARDC meeting. Two goals were established as follows. Goal 1: By the end of the 2016-2017 school year, when given a ***, Student will *** 3/5 times. Goal 2: By the end of the 2016-2017 school year, ***, Student will ***.⁷⁷

32. The October IEP provided for the following services:⁷⁸

| IEP Services/Supports | Location | Frequency and Duration/Per Cycle | Start Date & End Date |
|-----------------------|-----------------------------------|----------------------------------|-----------------------|
| In Class Support-*** | General Education Classroom-Group | *** minutes, *** times per week | *** to *** |
| In Class Support-*** | General Education Classroom-Group | *** minutes, *** times per week | *** to *** |

33. It was agreed that Student would receive individualized instruction *** by a special education teacher daily to address Student’s weaknesses in academic strategies due to executive functioning needs. *** were held from ***.⁷⁹ Goals were not included for this special education time, and it is not included within the special education service page of the IEP.⁸⁰

34. The ARDC determined that ESY services were not recommended.⁸¹ There is no reference within the October IEP regarding deliberations to Student’s need for ESY services.⁸² It was also determined that Student would not receive speech therapy.⁸³

⁷² PE58 at 4-5.

⁷³ PE58 at 7-8.

⁷⁴ PE58 at 49.

⁷⁵ PE58 at 55-56, 59-60.

⁷⁶ PE58 at 60.

⁷⁷ PE22.

⁷⁸ RE5 at 60.

⁷⁹ PE21 at 21.

⁸⁰ PE21 at 11, 21.

⁸¹ PE21 at 11.

⁸² PE21.

⁸³ RE5 at 61.

35. During the October *** ARDC meeting, Parent expressed concern that she did not have all of the paperwork from the August ARDC meeting. Parent had 12 of the 22 pages. Respondent had not yet completed the paperwork.⁸⁴

December Review of Existing Evaluation Data (REED)

36. On November ***, 2016, Student's mother emailed the SPED, asking the status of Student's reevaluation.⁸⁵ Parents requested the REED to reconsider a SLD in reading comprehension. Respondent completed the REED on December ***, 2016.⁸⁶ Respondent determined that Student did not display a speech impairment.⁸⁷ Respondent also determined that Student did not meet eligibility as a student with a SLD, and recommended that Student qualify for special education services under OHI.⁸⁸

37. According to the December REED report Respondent only observed Student in *** class.⁸⁹ Petitioner was not provided with any records pertaining to the observation other than the December REED report.⁹⁰ LSSP *** testified that the observation was summarized in the report. Notes of the observation were taken but would be in a soft file in Respondent's special education office.⁹¹

January ***, 2017 IEP

38. In January of 2017, Student's physician referred Student for an evaluation of speech/language. Parents then engaged the services of ***, a licensed Speech and Language Pathologist (SLP).⁹² Ms. *** is an experienced SLP who has worked for school districts.⁹³ Ms. *** conducted a speech evaluation of Student on January ***, 2017. Student was diagnosed with *****.⁹⁴ At the time of the hearing, she was Student's speech therapist.⁹⁵ She found Student's skills to be moderately impaired.⁹⁶ A *** is when an individual has difficulty ***, ***.⁹⁷ When an individual has a ***, the individual has impairments in ***.⁹⁸ Ms. *** established short and long- term goals for Student.⁹⁹

⁸⁴ PE58 at 93-94.

⁸⁵ RE26 at 830.

⁸⁶ RE15.

⁸⁷ RE15 at 256.

⁸⁸ RE15 at 269.

⁸⁹ PE25 at 12; Tr. at 483.

⁹⁰ Tr. at 483-484.

⁹¹ Tr. at 483-485.

⁹² PE8.

⁹³ PE9.

⁹⁴ PE8; Tr. at 238-239.

⁹⁵ PE12.

⁹⁶ Tr. at 238-239.

⁹⁷ Tr. at 228.

⁹⁸ Tr. at 231.

⁹⁹ PE8.

39. Ms. *** believes it is possible to improve the skills of children like Student. However, sometimes it is hard to improve certain skills.¹⁰⁰ You have to teach compensatory strategies because certain areas are always going to be difficult. Some skills can be remediated and some not.¹⁰¹ Ms. *** believes Student should receive services for Student's *** disorder in a school setting.¹⁰² Ms. *** observed during therapy sessions Student is having difficulty ***.¹⁰³ Ms. ***'s opinion was based on both the results of the Clinical Evaluation of Language Fundamentals 5th Edition (CELF-5), and experience working with Student.¹⁰⁴ The IEPs for the 2016-2017 school year do not provide Student with any speech or language services.¹⁰⁵
40. ***.¹⁰⁶
41. On January ***, 2017, Student's mother filed a public information request to obtain a copy of Student's records.¹⁰⁷ On January ***, 2017, Parent followed up with Respondent regarding her record request so Parents could review Student's records prior to the January ***, 2017 ARDC meeting.¹⁰⁸ The District responded to Parent's request for a copy of Student's records on January ***, 2017.¹⁰⁹
42. On January ***, 2017, Respondent employee *** sent an internal e-mail to Counselor *** about Parent saying "***".¹¹⁰
43. The ARDC met on January ***, 2017. No advance draft copy of the ARD paperwork was provided to Petitioner by Respondent.¹¹¹ Respondent again determined Student met the eligibility of OHI but not SLD.¹¹² Prior to ARDC meetings, LSSP *** met with the SPED to discuss her conclusions about whether or not Student had a SLD. These discussions were outside the ARDC meeting.¹¹³ As pertains to Student, the LSSP did not make a recommendation to the ARDC without discussing it first with the SPED prior to the ARDC meeting.¹¹⁴ These meetings are called "staffings".¹¹⁵ The LSSP does not keep records of these meetings.¹¹⁶ The LSSP believes there were six diagnosticians at Student's staffing, and that they were all there because this was "***" due to a lot of objections from Parents on

¹⁰⁰ Tr. at 238-239.

¹⁰¹ Tr. at 239.

¹⁰² Tr. at 239-240.

¹⁰³ Tr. at 240.

¹⁰⁴ Tr. at 231-233; PE8.

¹⁰⁵ RE3 at 32; RE5 at 61; RE11 at 139.

¹⁰⁶ 34 C.F.R. §300.8.

¹⁰⁷ RE26 at 864.

¹⁰⁸ RE26 at 784.

¹⁰⁹ RE26 at 864.

¹¹⁰ PE41 at 18.

¹¹¹ Tr. at 363.

¹¹² RE11.

¹¹³ Tr. at 459-462.

¹¹⁴ Tr. at 462.

¹¹⁵ Tr. at 490.

¹¹⁶ Tr. at 463.

the eligibility of Student.¹¹⁷ The decision about Student’s eligibility was “backed up by the staffing” at the January staffing meeting.¹¹⁸ The LSSP made a recommendation regarding Student’s eligibility at the staffing.¹¹⁹ Parents weren’t notified about this meeting, nor about this recommendation.¹²⁰ Parents did not receive PWN of the meeting.¹²¹ After the staffing meeting, the LSSP then went to the ARDC meeting and told Parents she was still going to continue to find Student as not eligible as a SLD.¹²²

44. The ARDC recommended that Student receive all instruction and services in the general education setting with supplementary aids and services.¹²³ Respondent again determined Student would not receive speech therapy.¹²⁴ The ARDC determined AT services and devices were not needed by Student.¹²⁵ The January IEP provided for the following services:¹²⁶

| IEP Services/Supports | Location | Frequency and Duration/Per Cycle | Start Date & End Date |
|--------------------------|---------------------------------------|----------------------------------|-----------------------|
| In Class Support- *** | General Education Classroom- Group | *** minutes per week | *** |
| In Class Support- *** | General Education Classroom- Group | *** minutes per week | *** |

45. The January IEP notes that Student’s *** have been updated for the current ARD.¹²⁷ The IEP indicates a review of ARDC decisions regarding *** and *** would be completed.¹²⁸ However, the IEP does not reflect what those plans or services are.

46. The January IEP lists the following goals:¹²⁹

Goal 1: By the end of the 2016-2017 school year, when ***, Student will *** 3 out of 5 times.

Goal 2a: By the end of the 2016-2017 school year, ***, Student will ***.

Goal 2b: By the end of the 2016-2017 school year, when ***, Student will *** a 70% accuracy rate.

Goal 3: By the end of 36 instructional weeks, when *** Student will ***.

Goal 4: In 36 instructional weeks, when *** Student will *** with 85% consistency.

¹¹⁷ Tr. at 490.

¹¹⁸ Tr. at 492-493.

¹¹⁹ Tr. at 492-493.

¹²⁰ Tr. at 462, 493-495.

¹²¹ Tr. at 493-495.

¹²² Tr. at 463.

¹²³ RE11.

¹²⁴ RE11 at 139.

¹²⁵ RE11 at 126.

¹²⁶ RE11 at 138.

¹²⁷ RE11 at 126.

¹²⁸ RE11 at 140.

¹²⁹ RE11.

47. The following benchmarks and objectives were listed in the January IEP:¹³⁰

1. By the end of the 2016-2017 school year, when ***, Student will *** 3 out of 5 times.
2. By the end of the 2016-2017 school year, when ***, Student will *** 3 out of 5 times.
3. By the end of 36 instructional weeks, ***, Student will *** 5 out of 5 times.
4. By the end of 36 instructional weeks, when ***, Student will *** 5 out of 5 times.
5. By the end of the 2016-2017 school year, when ***, Student will *** a 70% accuracy rate.
6. By the end of the 2016-2017 school year, when ***, Student will *** a 70% accuracy rate.
7. By the end of the 2016-2017 school year, when ***, Student will *** at 70% accuracy rate.
8. By the end of the 2016-2017 school year, when ***, Student will *** a 70% accuracy rate.
9. In 36 instructional weeks when *** Student will *** with 85% consistency.
10. In 36 instructional weeks when *** Student will *** with 85% accuracy.

48. The Esped system is a software program utilized to document the individual needs of students who receive special education services. Respondent uses this program to keep documents such as IEPs. In order to prepare for ARDC meetings, teachers have access to the Esped system.¹³¹

49. Advocacy consultant *** attended the January ARDC meeting for Student.¹³² Ms. *** has been a consultant for four years.¹³³ Prior to being a consultant she was a special education teacher and administrator for twenty years.¹³⁴ She is familiar with the ESped system and was an ESped administrator for three years for a school district in Texas.¹³⁵ At the January ARDC meeting, deliberations were not read.¹³⁶ She did not receive a copy of the IEP documents either before or after the meeting.¹³⁷ Generally at an ARDC meeting, the draft IEP is either provided in paper form or it is projected on the wall.¹³⁸ This IEP production did not happen at the January ARDC meeting, which is not common practice.¹³⁹

50. It is the experience of Ms. *** that a draft copy of the IEP is provided either prior to the ARDC meeting or upon arrival to the meeting. If that is not possible, Parents receive a copy at the end of the meeting.¹⁴⁰ It was difficult to participate in the ARDC meeting because Petitioner did not have any written documents. It was unclear whether or not discussions were being documented. It was also unclear whether or not parent involvement was being noted in the process.¹⁴¹

¹³⁰ RE11.

¹³¹ Tr. at 118, 204.

¹³² Tr. at 112.

¹³³ Tr. at 112.

¹³⁴ Tr. at 113.

¹³⁵ Tr. at 116-117.

¹³⁶ Tr. at 119.

¹³⁷ Tr. at 114.

¹³⁸ Tr. at 114.

¹³⁹ Tr. at 116, 119.

¹⁴⁰ Tr. at 121.

¹⁴¹ Tr. at 122-123.

51. On February ***, 2017, thirteen days after the January *** ARDC meeting, Respondent sent Parents a letter and PWN.¹⁴²
52. Dr. *** attended this January ARDC meeting. She explained her report and communicated that Student does have a learning disability in reading comprehension, and she disagreed with Respondent.¹⁴³ She explained to Respondent Student had a *** score of ***.¹⁴⁴ Student's teachers were noting Student is attentive to task and focused in the classroom.¹⁴⁵ Dr. *** further explained if Student is focused in the classroom and gives good effort and has ADHD, then the low scores reflecting reading comprehension problems cannot be the result of the ADHD.¹⁴⁶ She informed Respondent a reading deficit does not go part and parcel with a diagnosis of ADHD.¹⁴⁷ Dr. *** discussed the cross battery assessment with Respondent. She also resent the cross-battery spreadsheets to Respondent.¹⁴⁸
53. Dr. *** said Respondent seemed frustrated and a bit defensive that there was some criticism about how the implementation of the education plan had fared from the October meeting.¹⁴⁹ During the period between the October ARDC meeting and the January meeting, Respondent did not contact Dr. ***.¹⁵⁰ Her understanding of why Respondent disagreed with her on the SLD eligibility issue was there was an overriding consensus by Respondent that Student's difficulties could be attributed to ADHD alone.¹⁵¹ However, Dr. *** explained most children with ADHD do fairly well academically and do not have the degree of deficit that is present in reading comprehension that Student manifests.¹⁵²
54. Dr. *** believes it is possible to help Student improve in reading comprehension if there is an opportunity to develop the skill sets needed to be a more effective reader, but this skill requires some specific educational support to happen.¹⁵³ Student has a fairly difficult time completing aspects of ***.¹⁵⁴ Student does not *** to the level of sophistication that would be typical for someone in Student's age range. Dr. *** suggests intervention in this area.¹⁵⁵ Dr. *** also thinks Student would benefit from some systematic educational supports to teach Student how to be a more effective leader

¹⁴² RE7.

¹⁴³ RE11 at 141.

¹⁴⁴ PE60 at 20.

¹⁴⁵ PE60 at 25.

¹⁴⁶ PE60 at 26-27.

¹⁴⁷ PE60 at 27.

¹⁴⁸ Tr. at 387-388.

¹⁴⁹ Tr. at 353.

¹⁵⁰ Tr. at 353-354.

¹⁵¹ Tr. at 355.

¹⁵² Tr. at 356.

¹⁵³ Tr. at 356.

¹⁵⁴ Tr. at 357.

¹⁵⁵ Tr. at 357.

by identifying ***. Student would need to *** to help Student determine what is ***.¹⁵⁶ She believes a reading curriculum focused on ***, preparing Student in advance for ***, giving Student tips and techniques for how to *** for processing, and giving Student ways to actively address *** is needed.¹⁵⁷

55. Dr. *** believes although Respondent can provide services without having Student eligible as SLD, Respondent should include SLD because another district might be getting the IEP in the future and would not know of Student's reading comprehension issues.¹⁵⁸ The concern that this ignorance could affect *** was discussed during the Oct ARDC meeting.¹⁵⁹

56. LSSP *** testified that she reviewed the report from Dr. ***, the *** FIE, and Dr. ***'s report.¹⁶⁰ She disagreed with Dr. ***'s determination that Student has a SLD.¹⁶¹ She depended on the X-BASS guide to determine Student's eligibility. The X-BASS guide is a cross-battery assessment.¹⁶² Based on her training and the X-BASS cross battery assessment book, she believed an individual needs a score lower than an 85 to qualify as a SLD.¹⁶³ Her review of the records led her to believe Student's psychological processes fall in the average range.¹⁶⁴ She believed Student's score does not represent a normative weakness, but rather a personal weakness.¹⁶⁵ She does not think Student has a well-documented *** deficit.¹⁶⁶ She believed Student's ADHD is effecting Student's executive functioning.¹⁶⁷

March 2017 IEP

57. An FIE Addendum was created on March ***, 2017. The stated reason for the evaluation was a special request by the ARDC. Respondent determined after receiving additional data from Dr. *** on January ***, 2017, Student met the eligibility of a SLD in the area of reading comprehension.¹⁶⁸ Respondent further determined based on this information from Dr. ***, Student's standard *** score of *** is a deficit adversely impacting Student's academic achievement in ***.¹⁶⁹ Respondent noted Student was receiving special education and related services under the eligibilities of OHI and

¹⁵⁶ Tr. at 357-358.

¹⁵⁷ Tr. at 359.

¹⁵⁸ Tr. at 406-407.

¹⁵⁹ PE60 at 55.

¹⁶⁰ Tr. at 436-439.

¹⁶¹ Tr. at 440.

¹⁶² Tr. at 442.

¹⁶³ Tr. at 444.

¹⁶⁴ Tr. at 444-446.

¹⁶⁵ Tr. at 446-447.

¹⁶⁶ Tr. at 448.

¹⁶⁷ Tr. at 447.

¹⁶⁸ RE16.

¹⁶⁹ RE16 at 290.

SLD.¹⁷⁰ (However, the statement Student was receiving services under the eligibilities of both OHI and SLD conflicts with the prior IEPs from Respondent and is not supported by the evidence.)

58. In March Respondent noted Student's score in reading comprehension fell in the low range of ***%. Respondent further noted Student showed areas of weakness in ***, and had not made personal progress on the STAAR since Student was in the *** grade.¹⁷¹
59. Parents first learned of the March ***, 2017 reevaluation review in April while they were in mediation.¹⁷² LSSP *** and Respondent's employee *** wrote the document.¹⁷³ Although she signed the document, the LSSP does not believe Student meets the criteria for a SLD.¹⁷⁴ There is nothing in the document stating the LSSP is not in agreement.¹⁷⁵ Parents did not receive a copy of this document.¹⁷⁶
60. On March ***, 2017, Respondent sent Parents a notice to attend a March ***, 2017 ARDC meeting.¹⁷⁷ Respondent's counsel was included in this invitation.¹⁷⁸ The invitation states the ARDC is proposing the addition of a SLD in the area of ***.¹⁷⁹
61. Respondent held the ARDC meeting on March ***, 2017. However, Parents were not in attendance. The purpose of the ARD meeting was to reconvene prior ARD meetings that ended in disagreement. The ARDC report states Respondent is in agreement with Parents request to add another area of eligibility for Student as learning disabled in reading comprehension.¹⁸⁰ The proposed IEP deemed Student as eligible with a SLD in reading comprehension.¹⁸¹ This proposed IEP did not create new goals or objectives for Student. Although she signed off on it, LSSP *** does not agree with the eligibility of a SLD.¹⁸² When questioned, LSSP *** did not answer if Parents should believe Respondent's documents or the LSSP's opinion.¹⁸³
62. Respondent sent Parents a PWN informing Parents that at the March ***, 2017 ARD meeting, after receiving additional data from Dr. ***, Respondent proposed adding the learning disability eligibility for Student.¹⁸⁴

¹⁷⁰ RE16 at 275.

¹⁷¹ PE28 at 2.

¹⁷² TR. at 413-414.

¹⁷³ Tr. at 469.

¹⁷⁴ Tr. at 470-471.

¹⁷⁵ Tr. at 471.

¹⁷⁶ Tr. at 412-414.

¹⁷⁷ RE9.

¹⁷⁸ RE10.

¹⁷⁹ RE10.

¹⁸⁰ RE11 at 142-143.

¹⁸¹ PE11.

¹⁸² Tr. at 467-468.

¹⁸³ Tr. at 467.

¹⁸⁴ RE7.

63. Although Respondent and their counsel knew Respondent was in agreement with the eligibility determination of a SLD for Student, on March ***, 2017 Respondent filed its answer in this due process hearing denying Student's eligibility for services as a student with a SLD.¹⁸⁵
64. On May ***, 2017, Respondent filed an Affidavit of SPED *** with the hearing officer. The affidavit reports on January ***, 2017, Respondent received a supplemental report from Dr. ***, and on the basis of the supplemental report, Respondent determined Student may meet the eligibility requirements for a SLD. The affidavit further reports on March ***, 2017 SPED *** contacted Parent and advised her Respondent was willing to add the SLD eligibility based on the documentation from Dr. ***.
65. On May 9, 2017, Respondent filed Lubbock-Cooper ISD's Response in Opposition to Petitioner's Motion for Partial Summary Judgment. On page 5 of the submission Respondent states, "It was only after Dr. *** provided additional evaluative data on January ***, 2017, showing that the student had a standard *** of ***, that Respondent concluded the student met the eligibility requirements under SLD."
66. On May ***, 2017, Respondent's LSSP testified Student does not have a SLD.¹⁸⁶ The LSSP disagrees with the March ***, 2017 document sent by Respondent to Parents which states Student has a SLD.¹⁸⁷ As of May ***, 2017, the LSSP did not think Student was eligible for services as a student with a SLD.¹⁸⁸ Per the LSSP, Respondent has operating guidelines that a cutoff for cognitive has to be 85.¹⁸⁹ Based on her training, the LSSP and her colleagues agree the cross-battery assessment sets 85 as a cutoff. Other districts in the area go by the number as well.¹⁹⁰
67. At the May 22nd hearing, Respondent took the position it was still objecting to the SLD designation.¹⁹¹ Respondent's counsel characterized its earlier willingness to grant this designation before the due process complaint was filed as a "compromise".¹⁹² Respondent's position is some members of the ARDC believe Student is eligible and some do not.¹⁹³ Petitioner was willing to stipulate if Respondent recognized Student as being SLD in reading comprehension from the hearing date forward, Respondent could preserve its right to argue Student was not eligible as SLD before this date. Respondent did not respond to this offer to stipulate.¹⁹⁴

¹⁸⁵ PE2.

¹⁸⁶ Tr. at 466-467.

¹⁸⁷ Tr. at 467.

¹⁸⁸ Tr. at 468.

¹⁸⁹ Tr. at 476.

¹⁹⁰ Tr. at 478-480.

¹⁹¹ Tr. at 367-371.

¹⁹² Tr. at 370.

¹⁹³ Tr. at 390.

¹⁹⁴ Tr. at 395-397.

68. Respondent unreasonably protracted the final resolution of an issue in controversy, specifically the issue of whether Student qualified for services as a student with a SLD.

69. On April ***, 2017 Ms. *** met with Student for the first time for about *** minutes regarding ***. ¹⁹⁵ She did not do a *** evaluation of Student. ¹⁹⁶ During this meeting, Ms. *** did *** with Student, ***, and a ***. ¹⁹⁷ Ms. *** recorded Student's answers. ¹⁹⁸ She was aware that Student ***, but was unaware ***. ¹⁹⁹ She was also unaware that Student did not ***. ²⁰⁰ She believes *** are part of *** and ***. ²⁰¹ When she asked Student if Student wanted her assistance with ***, Student indicated no because Student's parents could help Student. ²⁰² She did tell Student that ***. ²⁰³ She believes Student is ***. ²⁰⁴

MAY 2017

70. Respondent scheduled an ARDC meeting for May ***, 2017, but did not convene it. ²⁰⁵ Parents did not plan on attending this ARDC meeting because a mediation session was scheduled and Parents decided mediation was the proper course at that point. ²⁰⁶ On May *** Student's mother notified Respondent that although she was willing to attempt to mediation, she was concerned Respondent put in writing Student was eligible under a SLD but told the hearing officer Respondent is not agreeing Student is eligible. ²⁰⁷

71. *** was Student's *** teacher. ²⁰⁸ She has been teaching for eight years. ²⁰⁹ She could not say which IEP she was working off of during the school year. ²¹⁰ The August IEP states Respondent will *** by providing certain things for Student. ²¹¹ The January IEP states Student will have ***. ²¹² She is aware of the two goals for Student but does not know the baseline for these goals. ²¹³ She does not have

¹⁹⁵ Tr. at 79.

¹⁹⁶ Tr. at 80.

¹⁹⁷ Tr. at 81.

¹⁹⁸ Tr. at 77.

¹⁹⁹ Tr. at 77, 86.

²⁰⁰ Tr. at 83.

²⁰¹ Tr. at 105.

²⁰² Tr. at 104.

²⁰³ Tr. at 104.

²⁰⁴ Tr. at 95.

²⁰⁵ Tr. at 474-475; RE12.

²⁰⁶ Tr. at 186.

²⁰⁷ PE30.

²⁰⁸ Tr. at 500.

²⁰⁹ Tr. at 501.

²¹⁰ Tr. at 523.

²¹¹ Tr. at 525; RE3 at 26.

²¹² Tr. at 527; RE11 at 132.

²¹³ Tr. at 513.

access to ESped.²¹⁴ Respondent describes her class as focusing on ***, and *** skills with a STAAR emphasis.²¹⁵

Parent Participation on the IEP Team and in IEP Team Meetings, Prior Written Notice, and Notice of Procedural Safeguards.

72. During ARDC meetings, Respondent types the IEP on a computer. However, Parents are not able to see what is on the computer.²¹⁶ Sometimes the IEP is on the screen.²¹⁷ Parents did not know what was being typed.²¹⁸ Parents would typically receive the paperwork seven to ten days after the ARDC meetings usually by U.S. mail.²¹⁹ At times Parents would not receive the ARDC meeting paperwork for ten or more days and the paperwork was not quite what was discussed at the meetings. Parent testified the paperwork was off by 25%. Parents would have to go back to the recording and figure out why the paperwork was wrong.²²⁰ Because they did not have the paperwork at the end of the meetings, Parents could not agree or disagree. Parents would have to confer after receipt of the paperwork, and would have to wait two and a half or three weeks after the meeting to voice their disagreement.²²¹ Sometimes Parents would not receive a response from the District when they tried to address discrepancies.²²² Student's father believed the IEP would go into effect before he could agree or disagree.²²³
73. Sometimes Parents made record requests before the ARDC meetings but did not always get the paperwork before the meeting.²²⁴ Parents did not feel like equal participants in the ARDC meetings.²²⁵ There was an inability to know how things ended because Parents never left with an ARD document. Parents did not have access to the ESped system, which impacted their ability to be involved in the ARD process. Student's father believes this lack of access did not put Parents on equal footing with respect to viewing the documents that affect Student.²²⁶
74. In order to be an equal participant of the ARDC, Student's father needs better and more timely communication from Respondent given Parents do not have access to the ESped program. Parent would like a more accurate understanding of Student's needs and a more timely discourse of about what's happening with Student.²²⁷ It would be helpful for Parents to have a visible version of the

²¹⁴ Tr. at 516.

²¹⁵ Tr. at 519.

²¹⁶ Tr. at 140.

²¹⁷ Tr. at 140.

²¹⁸ Tr. at 141.

²¹⁹ Tr. at 142-144.

²²⁰ Tr. at 151.

²²¹ Tr. at 143-145, 152-153.

²²² Tr. at 152-153.

²²³ Tr. at 146.

²²⁴ Tr. at 147.

²²⁵ Tr. at 147, 150.

²²⁶ Tr. at 153.

²²⁷ Tr. at 201-202.

working document at the IEP meetings, which Respondent does not provide.²²⁸ Respondent is capable of providing a copy of the working document during ARDC meetings but does not do so.²²⁹ During the ARDC meetings staff has access to ESped.²³⁰ If Parent is not allowed to read the IEP on ESped at the meeting, Parent would like to have the ARD documents at the close of the meeting.²³¹

75. Student's father would like to see the working document during the ARDC meeting so he can have participation and clarify questions or concerns at that time, instead of waiting two to three weeks to receive the documents and then having to reach out to Respondent if he disagrees with what is on the documents.²³² In order for Parents to come back to the ARDC and discuss a disagreement with Respondent, a month to two months goes by.²³³ With ESped, Respondent could use a screen projector during ARDC meetings which would allow all participant to see the working document as it is being revised and clarified. Parent would like to see this use of a screen projector happen, because time is lost in the follow up with Respondent after Parent receives ARDC documents from Respondent.²³⁴ Parent has specifically asked Respondent to use a screen projector.²³⁵

76. ***.²³⁶ As pertains to IEP documents, Respondent thinks it is reasonable to want to review the documents before they hand them over to a parent ***.²³⁷

77. ***.²³⁸ ***.²³⁹ Parent disagrees with this assertion and confirms he has done nothing more than any other concerned parent.²⁴⁰ Respondent routinely had counsel present during the ARDC meetings.²⁴¹

78. During the January ARDC meeting, Dr. *** noted the importance of having an actual document that can be generated at the end of the meeting so everybody knows what was talked about, and there is not a built -in time delay while paperwork is waiting. Having an actual document at the end of the meeting could alleviate some of the problems with Respondent's ARDC process.²⁴² During that meeting Parent communicated problems receiving paperwork from Respondent.²⁴³ Dr. *** explained it is her experience and good practice all across the state of Texas that parents are provided a copy of the paperwork prior to leaving the meeting. She informed Respondent the law dictates once an educational record has been created on behalf of a student, parents then have the ability to access the

²²⁸ Tr. at 202.

²²⁹ Tr. at 202-203.

²³⁰ Tr. at 205.

²³¹ Tr. at 204.

²³² Tr. at 205.

²³³ Tr. at 205.

²³⁴ Tr. at 206.

²³⁵ Tr. at 208.

²³⁶ Tr. at 191.

²³⁷ Tr. at 211-212.

²³⁸ Tr. at 191-192.

²³⁹ Tr. at 192.

²⁴⁰ Tr. at 192-193.

²⁴¹ PE60 at 2; RE11 at 147, 153; RE12 at 158.

²⁴² PE60 at 85.

²⁴³ PE60 at 85.

record. To block it, deny it, or delay it, is not only bad practice but also violates Parents ability to have a copy of their child’s educational record which should be available for full disclosure at any point.²⁴⁴ Principal *** responded saying they were still working on the draft.²⁴⁵ Dr. *** stressed the draft is in place and it should be sent ahead of time. If changes are made a copy should be sent home with the family so they can make sure those changes are in place.²⁴⁶ The principal responded, “We will note your request”.²⁴⁷

79. Principal *** testified she felt like she needed to appease Student’s mother. She did extra things for Student at Parent’s request.²⁴⁸

80. Parents were provided with four progress reports during the school year. The reports are dated November ***, 2016, December ***, 2016, February ***, 2017 and April ***, 2017.²⁴⁹

V. DISCUSSION

The IDEA was enacted to ensure that children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.²⁵⁰ It requires at the beginning of each school year, each local education agency (LEA) have in effect for each child with a disability in its jurisdiction, an individualized education program (IEP).²⁵¹ In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the LEA shall provide such child with a FAPE, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the LEA adopts the previously held IEP or develops, adopts, or implements a new IEP that is consistent with Federal and State law.²⁵² School districts may not ignore the needs of a disabled student, nor may they await parental demands before providing specialized instruction.

²⁴⁴ PE60 at 87.

²⁴⁵ PE60 at 88.

²⁴⁶ PE60 at 88-89.

²⁴⁷ Tr. at 89.

²⁴⁸ Tr. at 561-562.

²⁴⁹ RE17.

²⁵⁰ 20 U.S.C §1400.

²⁵¹ 20 U.S.C § 1414.

²⁵² 20 U.S.C. §1414(d).

Under the IDEA and its implementing regulations, a FAPE includes special education and related services that are provided at public expense, under public supervision and direction, without charge, and meet the standards of the state education agency (SEA).²⁵³

Upon a finding a child has a disability, an ARDC meets to develop an IEP for the child.²⁵⁴ The ARDC consists of a school district representative, a special education teacher, the child's parents or guardian, and where appropriate the child. The IEP developed by the ARDC need not be the best possible plan for the child, nor one that will maximize the child's potential; rather it need only be a basic floor of opportunity, specifically designed to meet the child's unique needs, and supported by services that will permit Student to benefit from the instruction. An IEP must be designed to achieve a meaningful educational benefit.²⁵⁵ Parents play a significant role in this process.²⁵⁶

The Supreme Court has directed a school district's liability for violations of the IDEA is a two-fold inquiry: (1) Has the school district complied with the procedures set for in the IDEA: and (2) Has the school district fulfilled its obligation to provide the student with a FAPE.²⁵⁷ In the case at hand, this hearing officer finds that Respondent denied Parents meaningful participation in the development of the IEPs at issue. Respondent had come to definitive conclusions on Student's eligibility without the input from Parents, failed to incorporate suggestions of Parents such as the credible expert recommendations of Dr. *** and Ms. ***, failed to provide parents with relevant information and PWN, failed to include Parents in meetings where Student's eligibility and services were discussed, and in some instances failed to listen to the concerns of Parents. It is clear from the evidence Respondent predetermined the IEPs.

A school district's violation of the IDEA's procedural requirements may constitute a failure to provide a FAPE. If a court determines that such a violation occurred, there is no need for the tribunal to consider the merits of the proposed IEP.²⁵⁸ Here, the procedural violations of the IDEA requirements constitute a failure of Respondent to provide Student with a FAPE. The proposed IEPs also fail to provide Student with a FAPE.

Respondent failed to provide Student with a FAPE during the 2016-2017 school year.

The U.S. Supreme Court has ruled that a FAPE requires tailoring the education to the unique needs of the child with a disability. The Court ruled an educational program is meaningful if it is reasonably

²⁵³ 34 C.F.R. §300.17.

²⁵⁴ *R.H. v. Plano Independent School District*, 607 F.3d 1003 (5th Cir. 2010).

²⁵⁵ *C.M. v. Warren Independent School District*, 117 LRP 17212 (E.D. Tex. 2017).

²⁵⁶ *D.B. v. Gloucester Township School District*, 59 IDELR 92 (3rd Cir. 2012).

²⁵⁷ *Board of Education of Hendrick Central School District v. Rowley*, 458 U.S. 176 (1982).

²⁵⁸ *D.B. v. Gloucester Township School District*, 59 IDELR 92 (3rd Cir. 2012).

calculated to confer a meaningful educational benefit rather than regression or trivial educational advancement.²⁵⁹ In *Andrew F. v. Douglas County School District*,²⁶⁰ the Court held the substantive standard for a FAPE under the IDEA is the IEP be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The 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.²⁶¹

Petitioner proved that Student was denied a FAPE for the 2016-2017 school year. Respondent failed to propose an appropriate IEP for Student during the 2016-2017 school year. Respondent failed to evaluate and identify Student as eligible for services as a student with a SLD and a language disorder. Respondent also failed to make the Parents equal participants on the IEP Team. Respondent failed to provide services in a coordinated and collaborative manner by the key stakeholders. Respondent also failed to educate Student in the LRE.

In IDEA cases, the hearing officer functions as the trier of fact. The trier of fact is the sole judge of the credibility of witnesses and the weight to be given their testimony.²⁶² This hearing officer found the testimony of Dr. ***, Ms. ***, and Ms. *** to be very credible. Ms. *** evaluated Student in January and determined Student has a *** ***,²⁶³ Ms. *** believes Student should receive services for Student's language disorder in a school setting.²⁶⁴ Respondent failed to evaluate Student or provide services to address Student's language disorder.

Dr. *** is the only psychologist to test and observe Student. Dr. *** testified that Student had more than one type of difficulty impacting Student educationally.²⁶⁵ Student presented with ADHD, which makes it hard for Student to pay attention. Besides severe ADHD, Student presents with the characteristic features of the imperfect ability to complete reading comprehension tasks. Student's difficulty in reading comprehension is not due to ADHD but rather a SLD.²⁶⁶ The ARDC met in August, October and January to develop an IEP. Despite credible and strong evidence from Dr. ***, Respondent refused to identify

²⁵⁹ *Board of Education of Hendrick Central School District v. Rowley*, 102 S. Ct. 3034 (1982).

²⁶⁰ *Andrew F. v. Douglas County School District*, 69 IDELR 174 (2017).

²⁶¹ *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

²⁶² *City of Keller v. Wilson*, 168 S.W.3d. 802 (Tex. 2005).

²⁶³ PE8 at 2.

²⁶⁴ Tr. at 239-240.

²⁶⁵ Tr. at 346.

²⁶⁶ Tr. at 347.

Student at having a SLD, or provide appropriate services to address Student's reading comprehension challenges.

Respondent was thereafter inconsistent in identifying Student as being eligible for services as a result of a SLD. In March and May of 2017, Respondent noted in writing that Student was eligible for services as a Student with a SLD. On March *** Respondent created an FIE Addendum, which states Respondent has determined Student meets the eligibility of a SLD in the area of reading comprehension.²⁶⁷ This March *** Reevaluation Review states Student is receiving special education services under the eligibilities of OHI and SLD. On March *** Respondent issued an invitation to an ARDC meeting stating the ARDC is proposing addition of a SLD in the area of reading comprehension.²⁶⁸ On May ***, 2017, Respondent filed an Affidavit of SPED *** with the hearing officer reporting that on March ***, 2017 Ms. *** contacted Parent and advised her Respondent was willing to add the SLD eligibility based on the documentation from Dr. ***.

During the May 22nd due process hearing, Respondent put the issue of whether Student was eligible for services as a student with a SLD back into dispute.²⁶⁹ When this hearing officer attempted to clarify if the issue was still at dispute, Respondent through counsel stated "It may and it may not be."²⁷⁰ Respondent thereafter introduced evidence through LSSP *** that Student was not eligible for services as a student with a SLD.²⁷¹ Respondent did not notify Petitioner prior to the hearing they were changing their position on the issue of eligibility once again.²⁷² Respondent thereafter litigated the issue of whether Student was eligible for services as a student with a SLD even though Respondent had made several statements during the litigation of this matter Student was eligible for services as a Student with a SLD.²⁷³ When given the opportunity to stipulate to the issue of eligibility during the hearing, Respondent refused.²⁷⁴

A credible IEP cannot be completed when Respondent cannot or will not determine the eligibility of Student. Additionally, Parents are not able to be equal partners on the IEP Team when Respondent changes its determination on eligibility without providing notice to Parents. Parents can not participate in the decision-making process regarding the provision of a FAPE to their child when Respondent fails to inform them of meetings such as the March *** meeting.²⁷⁵ Based upon the evidence submitted, **this**

²⁶⁷ RE16.

²⁶⁸ RE9.

²⁶⁹ Tr. at 368-371.

²⁷⁰ Tr. at 368.

²⁷¹ Tr. at 440-444.

²⁷² Tr. at 368-371.

²⁷³ Tr. at 368-371.

²⁷⁴ Tr. at 370-371.

²⁷⁵ RE16; Tr. at 413-414.

hearing officer finds the IEPs proposed by Respondent are not reliable and failed to provide Student with a FAPE.

Respondent is ORDERED to identify Student as a Student with a SLD for reading comprehension in Student's ARD paperwork prior to the start of the 2017-2018 school year.

Respondent is also ORDERED to engage the services of Dr. *** at Respondent's expense in order to assist in developing an IEP for Student that includes present levels of performance for reading comprehension, goals for reading comprehension, and direct services for reading comprehension from a qualified individual on a basis to be determined with the assistance of Dr. ***.

Respondent is ORDERED to identify Student as a Student having a Speech and Language Impairment, specifically a *** ***, in Student's ARD paperwork prior to the start of the 2017-2018 school year.

Respondent is ORDERED to engage the services of *** at Respondent's expense in order to assist in developing an IEP that includes present levels of performance for speech and language needs, goals for speech and language services in the school setting, and for speech and language services.

Least Restrictive Environment

The IDEA requires children with disabilities be placed in the LRE. To the maximum extent appropriate, children with disabilities in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.²⁷⁶

The record suggests Respondent failed to educate Student in the LRE. Throughout the entire school year, Respondent disputed Student was eligible for services as a student with a SLD. Respondent also failed to determine that Student needed speech language services. Respondent failed to ensure Student received all instruction and services in the general education setting with appropriate supplementary aids and services. Although Student was in a mainstreamed environment during the 2016-2017 school year, Respondent failed to provide Student with an IEP, which provided support and services as a student with a SLD and an ***.

²⁷⁶ 20 USCS 1412(a)(5)(A).

***.

***. ***. ***.²⁷⁷

The August, October, and January IEPs do not contain *** for Student. ***. The *** met with Student for the *** minutes on April ***, 2017. However, *** was not created. Respondent did not complete a *** evaluation of Student. Additionally, Ms. *** failed to explore options for Student or provide follow up assistance, instead relying on ***. Ms. *** was unaware Student had not ***. Additionally, Student's father testified Respondent did not provide him with information regarding *** and that he felt left out of the process.²⁷⁸ **This hearing officer finds** Respondent failed to provide ***.

Respondent is ORDERED to pay for a private evaluator at Petitioner's choice to conduct a *** evaluation of Student, which will address Student's needs and thereafter, with the assistance of same, develop an IEP that includes present levels of performance for ***, *****, and *****. **Respondent is further ORDERED** to complete this prior to the close of the first semester of the 2017-2018 school year.

ESY

Petitioner identifies as a sub issue whether Respondent failed to provide Student with ESY during the summer of 2017. The IDEA requires Respondent to ensure ESY services are available as necessary to provide a FAPE.²⁷⁹ Under Texas law, the need for ESY services must be documented from formal or informal evaluations provided by the District or the parents. The documentation must demonstrate that in one or more critical areas addressed in the current IEP goals and objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.²⁸⁰

Based upon the evidence submitted, this hearing officer finds Respondent failed to assess if ESY services were appropriate for Student. The evidence suggests Respondent pre-determined Student would not receive ESY services. That said, it is unclear if Student needed ESY services during the summer of 2017. There was insufficient evidence to determine whether Student had a need for ESY. Petitioner did not meet their burden of proof on this sub-issue.

²⁷⁷ ***.

²⁷⁸ Tr. at 154-158.

²⁷⁹ 34 C.F.R. §300.106.

²⁸⁰ 19 Tex. Admin. Code §89.1065.

Respondent failed to properly evaluate Student during the 2016-2017 school year.

School are required to locate, identify and evaluate all children with disabilities. This includes all children who are suspected of having a disability, including children who receive passing grades and are advancing grade to grade.²⁸¹

Although Student experienced educational issues at the District during the 2016-2017 school year, Respondent did not complete appropriate evaluations of Student, nor did Respondent request consent to complete same. Despite strong evidence from Dr. *** and Ms. *** regarding the needs of Student, Respondent failed to identify and evaluate Student as a student with a SLD, and a student with a *** ***. Respondent thereafter failed to provide related services which Student needed and was entitled to receive.

Respondent failed to provide Parents with PWN and Procedural Safeguards during the 2016-2017 school year.

The IDEA regulations require PWN to the parents where the District proposes or refuses to initiate or change the identification, evaluation, placement or provision of a FAPE.²⁸² The PWN must describe the action proposed or refused by the District. It must include an explanation of why the District proposed or refused the action; and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action or refusal. It must advise the parents of the child with a disability of their protections under the procedural safeguards.²⁸³

The IDEA requires states to establish and maintain procedural safeguards to ensure that children with disabilities are receiving a FAPE.²⁸⁴ These safeguards include allowing parents to serve on the ARDC.²⁸⁵ The IDEA sets up general procedural safeguards that protect the parents in the development of an education plan for their child.²⁸⁶ Parents are to be provided with an opportunity to present complaints regarding the identification, evaluation, and educational placement of the child, and the provision of a FAPE.²⁸⁷ If complaints are not resolved, the parents are entitled to an impartial due process hearing conducted by the state or LEA.²⁸⁸ Failing to provide procedural safeguards and timely written notice is a

²⁸¹ 34 C.F.R. §300.111.

²⁸² 34 C.F.R. §300.503.

²⁸³ 34 C.F.R. §300.503.

²⁸⁴ 20 USCS 1415(a).

²⁸⁵ *Winkelman v. Parma City School District*, 550 U.S. 516 (2007).

²⁸⁶ *D.B. v. Gloucester Township School District*, 59 IDELR 92 (3rd Cir. 2012).

²⁸⁷ 20 USCS 1415(b).

²⁸⁸ 20 USCS 1415(f).

significant procedural violation that denies a student a FAPE.²⁸⁹ A district's failure to meet these procedural requirement alone may warrant finding, as a matter of law, that the district has failed to provide the student a FAPE.²⁹⁰

Respondent must ensure that the IEP team for each child with a disability includes the parents of the child.²⁹¹ Respondent must take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are afforded an opportunity to participate including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The Notice of the meeting must indicate the purpose, time and location of the meeting, and who will be in attendance. Respondent must also give the parent a copy of the child's IEP at no cost to the parent.²⁹²

Petitioner alleges that Respondent failed to comply with the procedural requirements of the IDEA, including the provision of PWN and procedural safeguards. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies – (i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision -making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of an educational benefit.²⁹³

The evidence revealed that Respondent failed to timely provide Parents with PWN. After the August *** ARDC meeting, Respondent waited until September ***, 2016 to provide Parents as to the reason Respondent was not willing to find that Student had a SLD.²⁹⁴

Respondent routinely failed to timely provide Parents with Student's ARD paperwork before, during, and after the ARDC meetings.²⁹⁵ Parents need a copy of the paperwork so they can be full participants in the process.²⁹⁶ Respondent's failure to timely provide Parents with copies of the ARDC paperwork created unnecessary confusion and delay.²⁹⁷ Dr. *** and Ms. *** have extensive experience with ARDC meetings in various school districts throughout Texas.²⁹⁸ In their experience, Respondent's failure to timely provide Parents with copies of the IEP paperwork prior to or at the end of the ARDC meetings is

²⁸⁹ *El Paso Independent School District v. Richard R.*, 567 F. Supp. 2d (W.D. Tex. 2008).

²⁹⁰ *Jackson v. Franklin County School. Bd.*, 806 F.2d 623 (5th Cir. 1996).

²⁹¹ 34 C.F.R. §300.321.

²⁹² 34 C.F.R. §300.322.

²⁹³ 34 C.F.R. §300.513.

²⁹⁴ PE20 at 8.

²⁹⁵ Tr. at 140-153, 350-353, 363; PE41 at 7; PE58 at 93-94.

²⁹⁶ *T.R. v. School District of Philadelphia*, 69 IDELR 34 (E.D. Pa. 2016).

²⁹⁷ Tr. at 122-123, 151, 206, 412-414.

²⁹⁸ Tr. at 112-113; PE60 at 87.

both uncommon and not best practice.²⁹⁹ This failure to timely provide Parents copies of ARD paperwork is not common practice among other Texas school districts.³⁰⁰ Generally, a draft is provided in paper form or projected on the wall during the meeting for discussion purposes and the parents are given an IEP when they leave the meeting.³⁰¹

The August IEP is 19 pages.³⁰² The October IEP is 28 pages.³⁰³ During the ARDC meetings, Parents were required to try to orally follow what was being created without having the document in front of them. Parents thereafter had to wait for Respondent to send them the paperwork.³⁰⁴ If Parents had a question or concern, Parents had to confer with each other and listen to the ARDC recordings to try to recall what was discussed.³⁰⁵ Respondent's failure to timely provide Parents with a copy of Student's ARD records interferes with Student's ability to receive a FAPE and/or the ability of Parents to meaningfully participate in the planning and decision-making embodied in the IEP process.³⁰⁶

Parents had to repeatedly ask for relevant information and paperwork concerning their ***.³⁰⁷ At times, the concerns of Parents were ignored and not responded to.³⁰⁸ Parents were not always treated with respect by Respondent.³⁰⁹ Parents were also not treated as equal participants in the ARDC process.³¹⁰ In March Respondent failed to provide Parents with copies of paperwork reflecting Respondents decision to add the eligibility of a SLD to Student.³¹¹ Respondent failed to invite Parents to a March *** meeting during which Respondent decided to add a SLD to Student's eligibility.³¹² Respondent failed to notify Parents that Respondent was holding "staffings" during which Student's eligibility was being predetermined.³¹³ Respondent failed to include Parents in discussions regarding *** and ESY services.³¹⁴ **This hearing officer finds** that Parents were not made equal participants in the ARDC due to the actions and inactions of Respondent.

²⁹⁹ Tr. at 119.

³⁰⁰ Tr. at 119.

³⁰¹ Tr. at 114, 121.

³⁰² PE18.

³⁰³ PE21.

³⁰⁴ Tr. at 114.

³⁰⁵ Tr. at 151-153.

³⁰⁶ Tr. at 122-123, 202-205; PE60 at 88-89.

³⁰⁷ PE20 at 3-4; PE41 at 7-9; PE42 at 37; RE26 at 627, 784, 785, 792, 864; Tr. at 147.

³⁰⁸ RE3 at 34; Tr. at 153.

³⁰⁹ RE26 at 391; PE41 at 18; Tr. at 561-561.

³¹⁰ On September ***, 2016, the principal at Student's school sent Student's teachers an email implying that Student's mother was demanding. RE 26 at 391.

³¹¹ Tr. at 413-414.

³¹² Tr. at 412-414.

³¹³ Tr. at 459-462, 490-495.

³¹⁴ Tr. at 158; PE21.

Petitioner bears the burden of proof that Respondent did not comply with the procedural requirements under the IDEA resulting in a denial of a FAPE. Procedural defects alone do not constitute a violation of a FAPE unless they result in a loss of educational opportunity.³¹⁵ After consideration of the alleged procedural defects and the record, the undersigned has determined that Petitioner established that the procedural deficiencies resulted in a deprivation of educational benefit and opportunity, significantly infringing on Parents opportunity to participate in the IEP process, and impeded Student's right to a FAPE. **This hearing officer finds** during the 2016-2017 school year, Respondent failed to comply with procedural requirements of the IDEA, including the provisions of PWN, resulting in a denial of a FAPE to Student.

Respondent failed to comply with the IDEA's procedural requirements when developing an IEP for Student. **Respondent is ORDERED** to provide Parents (by e-mail or mail as preferred by Parents), a draft copy of ARD paperwork five calendar days before any ARDC meeting, and at the conclusion of each ARDC meeting, provide Parents with a copy of the completed IEP and PWN.

Compensatory Education Services

When a district denies a student a FAPE, courts and hearing officers have broad discretion to award an equitable remedy, including compensatory education. To fully compensate a student, the child is entitled to be made whole. Compensatory education is crucial to achieve that goal, and the courts in their broad discretion, may award it to whatever extent necessary to make up for the child's lost progress and to restore the child to the educational path he or she would have traveled but for the deprivation.³¹⁶ The Supreme Court has emphasized that IDEA relief depends on "equitable considerations" and courts enjoy broad discretion when fashioning relief.³¹⁷ Courts and hearing officers are reminded that the essence of equity jurisdiction is to do equity and to mould each decree to the necessities of the particular case, meaning that flexibility rather than rigidity should be the guide.³¹⁸ Compensatory education services may be provided in a variety of ways including in the form of private placement.³¹⁹

In their closing brief Petitioner requests the hearing officer order Respondent to provide Student with compensatory education services in an amount equal to *** hours for each school day of the 2016-2017 school year, to be used for Student's needs forward at the discretion of Parents. Petitioner further requests that these services should include specific hours for reading comprehension instruction, speech and language services, and ***. Based upon a review of the record, the undersigned finds a request for

³¹⁵ *Adam J. v. Keller Independent School District*, 328 F.3d 804 (5th Cir. 2003)

³¹⁶ *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015).

³¹⁷ *Florence County School District Four v. Carter*, 510 U.S. 7 (1993)

³¹⁸ *Lopez-Young v. District of Columbia*, 68 IDELR 186 (D.C. Cir. 2016)

³¹⁹ *Draper v. Atlanta Independent School System*, 518 F.3d 1275 (11th Cir. 2008).

compensatory education services to be appropriate. Even though Respondent had been provided with sufficient documentation, Petitioner's request for the addition of a SLD to Student's eligibility went ignored by Respondent for the entire school year.³²⁰ Additionally, Respondent failed to identify Student as needing speech/language services. Respondent failed to provide adequate services to address these needs of Student. Respondent failed to provide Student with a FAPE during the 2016-2017 school year. Student has not made progress on Student's STAAR assessments since *** grade.³²¹ Additionally, no credible evidence was offered to support a lesser amount of compensatory education services.

In *L.M. and M.M. v. Willingboro Township School District*,³²² when calculating the award for compensatory services, the Court determined that there were 6.5 hours in each school day during the school year, and 182 school days in the school year. The Court determined that each hour of compensatory education is valued at \$80.00 per hour. The Court ordered the defendant to place the appropriate amount for each hour of compensatory education into a trust for the parents to use for the student's reasonable educational, rehabilitative, therapeutic or recreational program provider at Petitioner's own election. The compensation was ordered because the district failed to properly evaluate the child, and failed to develop an appropriate IEP for her.

Having reviewed the records, **this hearing officer finds** Student should be awarded one year of compensatory education and services in an amount equal to *** hours for each school day of the 2016-2017 school year (180 days), to be used for Student's needs forward at the discretion of Petitioner. Each hour of compensatory education is to be valued at \$*** per hour. (Dr. *** charges \$*** per hour for services.) Within 45 calendar days from the date of this Order, Respondent is to place \$*** into an educational trust for Student's reasonable educational, rehabilitative, or therapeutic program providers at Petitioner's election.

Within 15 calendar days from the date of this Order, Petitioner is to designate and establish the account to be used for this educational trust fund, and notify Respondent of same. Parents are to manage the account.

Respondent Protracted Litigation

The issue of extending litigation has been a concern addressed by courts.³²³ The IDEA envisions that the parties should resolve their differences cooperatively.³²⁴ As pertains to the eligibility

³²⁰ PE20 at 4.

³²¹ PE20 at 4.

³²² *L.M. and M.M. v. Willingboro Township School District*, 70 IDELR 34 (D. N.J. 2017)

³²³ *El Paso Independent School District v. Richard R.*, 567 F. Supp. 2d 918 (W.D. Tex. 2008).

³²⁴ *Schaffer v. Weast*, 546 U.S. 49 (2005).

issue of Student, Respondent did the opposite. 19 Texas Administrative Code §89.1185(m) states that at the request of either party, the hearing officer must include in the final decision, specific findings of fact regarding whether the parent or public agency unreasonably protracted the final resolution of the issues in controversy in the hearing. There is nothing in the provision which prohibits a hearing officer from making this finding on her own accord. Additionally, 19 Texas Administrative Code §89.1170, provides hearing officers with authority to make orders *as justice requires* to maintain an orderly hearing process. Although Respondent conceded Student's eligibility for services as a student with a SLD as of March ***, 2017, Respondent continued to litigate the issue. **This hearing officer finds** Respondent unreasonably protracted the final resolution of an issue in controversy in the hearing, that being whether Student was eligible for services as a student with a SLD.

VI. CONCLUSIONS OF LAW

1. Petitioner currently resides within the geographical boundaries of the Lubbock-Cooper Independent School District, a legally constituted independent school district within the State of Texas. Petitioner is entitled to special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400, *et. seq.*
2. Respondent is a local educational agency (LEA) responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal education funding, and Respondent is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
3. Parents of students with disabilities are entitled to file a due process complaint and have a hearing on any matter related 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).
4. Respondent's educational program is presumed to be appropriate. As the party challenging the educational program proposed and instituted by the District, Petitioner bears the burden of proof on all issues raised in Petitioner's complaint.³²⁵ The burden of proof is by a preponderance of evidence.³²⁶
5. The Texas one-year statute of limitations (SOL) began to run one year before the date the complaint was originally filed on March 16, 2017. 19 Texas Administrative Code §89.1151(c).
6. Respondent correctly determined that Student is a child with one or more of the IDEA enumerated disabilities who, by reason thereof, is eligible for special education and related services, as a student with OHI. 19 Texas Administrative Code §89.1040.

³²⁵ *Schaffer ex re. v. Weast*, 546 U.S. 49 (2005).

³²⁶ 20 U.S.C. §1415..

7. Respondent failed to correctly determine that Student is a child with one or more of the IDEA enumerated disabilities who, by reason thereof, is eligible for special education and related services, as a student with a SLD. 19 Texas Administrative Code §89.1040.
8. Respondent failed to correctly determine that Student is a child with one or more of the IDEA enumerated disabilities who, by reason thereof, is eligible for special education and related services, as a student with a speech/ language impairment. 19 Texas Administrative Code §89.1040.
9. Student is a child with one or more of the IDEA enumerated disabilities who, by reason thereof, is eligible for special education and related services, as a student with OHI, SLD, and speech/language impairment. 19 Texas Administrative Code §89.1040.
10. Respondent's proposed placement for the 2016-2017 school year failed to place Student in the LRE. 20 U.S.C. §1412(a)(5)(A).
11. Respondent failed to develop an appropriate IEP for Student during the 2016-2017 school year. 34 C.F.R. §300.320 through 300.324.
12. Respondent failed to provide Student with ***, ***.
13. Respondent failed to provide Student with a FAPE during the 2016-2017 school year. 34 C.F.R. §300.17.
14. Respondent failed to properly evaluate Student during the 2016-2017 school year. 34 C.F.R. §300.301 through 34 C.F.R. §300.309.
15. Respondent failed to provide Petitioner PWN pursuant to the IDEA during the 2016-2017 school year. 34 C.F.R. §300.503.
16. Respondent failed to ensure that Parents were part of the IEP Team. 34 C.F.R. §300.321.
17. Respondent failed to ensure that Parents were afforded an opportunity to participate at each IEP Team meeting. 34 C.F.R. §300.322.
18. Respondent unreasonably protracted the final resolution of an issue in controversy in the hearing. 19 Texas Administrative Code §891185(m).

VII. ORDER

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

Petitioner's requested relief is denied in part and granted in part as follows:

1. Respondent is ORDERED to reimburse Petitioner for all costs of Dr. ****'s services pertaining to Student during the 2016-2017 school year, including the summer of 2017. This reimbursement includes the cost of evaluations and services provided during the 2016-2017 school year, it also includes but is not limited to travel expenses attending ARDC meetings and the due process hearing, as well as compensation for her time preparing for and attending these meetings and proceeding. Said re-imbursement is to be completed within 45 calendar days from the date of this ORDER. Six percent interest will accrue thereafter for any amount that remains unpaid after 45 calendar days from the date of this Order. Petitioner is to provide Respondent with receipts regarding these expenses within 15 calendar days from the date of this Order.
2. Respondent is ORDERED to identify Student as a Student with a SLD for reading comprehension in Student's ARD paperwork prior to the start of the 2017-2018 school year.
3. Respondent is ORDERED to engage the services of Dr. *** at Respondent's expense to assist Respondent in developing an IEP for Student that includes present levels of performance for ***, goals for ***, and direct services for *** from a qualified individual on a basis to be determined with the assistance of Dr. ***.
4. Respondent is ORDERED to identify Student as a Student having a Speech and Language Impairment, specifically a *****, in Student's ARD paperwork prior to the start of the 2017-2018 school year.
5. Respondent is ORDERED to engage the services of *** at Respondent's expense, to assist in developing an IEP that includes present levels of performance for speech and language needs, goals for speech and language services in the school setting, and speech and language services.
6. Respondent is ORDERED to pay for a private evaluator at Parents choice to conduct a *** evaluation of Student, which will address Student's needs and thereafter, with the assistance of same, develop an IEP that includes present levels of performance for ***, *****, and *****. Respondent is further ORDERED to complete this prior to the close of the first semester of the 2017-2018 school year.
7. Respondent is ORDERED to convene an ARDC meeting during the fall of 2017 that will include a full and fair discussion of Student's needs for ESY services in the summer of 2018. A decision on the issue of ESY services will be made by the ARDC no later than January ***, 2018, unless this deadline is extended by agreement of both parties.
8. Respondent is ORDERED to provide Parents (by e-mail or mail as preferred by Parents), a draft copy of ARD paperwork five calendar days before any ARDC meeting, and at the

conclusion of each ARDC meeting, provide Parents with a copy of the completed IEP and PWN.

9. Respondent is ORDERED to provide Student with compensatory education services in an amount equal to *** hours for each school day of the 2016-2017 school year (180 days), to be used for Student's needs forward, at the discretion of Petitioner. Each hour of compensatory service is valued at \$*** per hour. Within 45 calendar days from the date of this Order, Respondent is to place \$*** into an educational trust for Student's reasonable educational, rehabilitative, or therapeutic program providers at Petitioner's election. Within 15 calendar days from the date of this Order, Petitioner is to designate and establish the account to be used for this educational trust fund, and notify Respondent of same. Parents are to manage the account.

Any claim or relief sought in this hearing that has not been specifically granted, is hereby denied.

SIGNED and ENTERED on July 31, 2017.

Sherry Wetsch
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.³²⁷

³²⁷ 34 C.F.R. §300.516.