

DOCKET NO. 263-SE-0717

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

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Petitioner, STUDENT, b/n/f PARENT and PARENT (“Petitioner” or “Student”) brings this action against the Riesel Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 *et. seq* (IDEA) and its implementing state and federal regulations. This case is related to a previous due process hearing that resulted in a decision by another hearing officer issued on May 28, 2016 (the prior case).

The main issues in this case are whether the school district failed to provide Student with a free appropriate public education (FAPE) and whether the school district failed to provide Student with appropriate ***. The hearing officer concludes the school district provided Student with FAPE and an appropriate ***. The hearing officer also concludes the school district’s Full Individual Evaluation (FIE) was appropriate, and therefore, Petitioner is not entitled to the cost of an Individual Educational Evaluation (IEE) at school district expense.

A. Continuances and Extension of Decision Due Date

There were two continuances in this case. The first continuance, at the school district’s request, continued the hearing to September 11-12, 2017, and extended the decision deadline for good cause to October 11, 2017. The second continuance, at Student’s request, continued the

hearing to November 30 through December 1, 2017, and extended the decision deadline for good cause to January 11, 2018. The decision deadline was extended a third time, at the joint request of the parties, to February 2, 2018, to allow for filing of post-hearing briefs with access to the hearing transcript.

B. Legal Representatives

Student was represented throughout this litigation by Student's legal counsel Sonja Kerr and her co-counsel Idris Motiwala and Devin Fletcher of the Cuddy Law Firm. The school district was represented throughout this litigation by its legal counsel Gigi Driscoll of Walsh, Gallegos, Treviño, Russo and Kyle, P.C.

C. Resolution Session and Mediation

The parties agreed to attempt mediation in lieu of a Resolution Session. The parties mediated by telephone on September 21, 2017, but mediation was not successful.

D. Preliminary Motions

Petitioner filed its Motion to Add Falls Educational Cooperative (the Co-op) as a Party on November 16, 2017. Respondent filed its Response in Opposition to Add Falls Educational Cooperative as a Party on the same day. The motion was denied in Order No. 10 issued on November 28, 2017.

II. DUE PROCESS HEARING

The due process hearing was conducted on November 30 and December 1, 2017. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner's legal counsel, Sonja Kerr assisted by her co-counsel Devin Fletcher. In addition, Student's parents, PARENT and PARENT, also attended the due process hearing. Student appeared at the beginning of the due process hearing to meet the hearing officer but did

not attend the two-day hearing.

Respondent continued to be represented by its legal counsel Gigi Driscoll, assisted at the hearing by her co-counsel Nona Matthews also with the law firm of Walsh, Gallegos, Trevino, Russo & Kyle. In addition ***, the principal of ***, attended the hearing as the party representative. Both parties filed written closing arguments in a timely manner. The Decision in this case is due on February 2, 2018.

III. ISSUES

A. Petitioner's Issues

Petitioner confirmed the following IDEA issues for decision in this case and as clarified, without objection, on November 13, 2017:

*** and *** Assessments:

1. Whether the school district failed to conduct timely and appropriate *** assessments from ***, 2016 through ***, 2017;
2. Whether the school district failed to provide Student and Student's parents with sufficient information about *** prior to completing checklists (***, etc.) that were part of the April 2017 *** assessment and whether that failure denied and/or impeded Student's meaningful participation in the assessment process and/or significantly impeded Student's parents' meaningful participation in the assessment process;
3. Whether the failure to conduct timely and appropriate *** assessments and failure to provide Student and Student's parents with sufficient information about *** denied and/or impeded Student's right to FAPE and/or significantly impeded Student's parents a meaningful opportunity to participate in the assessment and the collaborative decision-making process for the May 2017 Individualized Education Plan (IEP);
4. Whether the school district failed to provide Student with appropriate *** during Student's *** grade year (2016-17) due to the school district's failure to conduct timely and appropriate *** assessments and/or because the *** IEP failed to include objective present levels of performance, appropriate and measureable goals and objectives with baselines, and procedural Prior Written Notice (PWN);

5. Whether the school district failed to propose appropriate *** at the May ***, 2017 Admission, Review & Dismissal Committee meeting (ARD) that was finalized on July ***, 2017 as stated in paragraph B on page 8 of the Complaint;

Procedural/Prior Written Notice:

6. Whether the school district failed to provide Student's parents with accurate PWN for the March ***, 2017 IEP meeting, failed to provide any proposed goals or topics for goals, failed to correctly identify in the deliberations the parents request for improved present levels of performance, and whether the school district failed to provide Student's parents with PWN of the school district's refusal to provide *** once the April 2017 *** assessment was completed;

FAPE:

7. Whether the school district failed to provide Student with FAPE during the 2016-17 school year, including complete procedural compliance, including specifically:
 - Whether the school district's progress reports were inadequate and confusing and thus, denied Student's parents sufficient information about Student's progress on Student's IEP and denied Student's ARD information to properly plan for any changes;
 - Whether the school district specifically failed to provide any special education instruction to Student for math during the 2016-17 school year;
 - Whether the school district failed to include appropriate present levels of achievement and functional performance (PLAAFPs) as stated in paragraph C on page 9 of the Complaint;
 - Whether the school district failed to provide Student with a sufficient amount of special education instruction;
 - Whether the school district failed to provide Student with dyslexia services by a licensed teacher at the *** level in the appropriate area and properly trained in teaching students with dyslexia;
 - Whether Student's failure to make sufficient educational progress; *i.e.*, whether the August 2016 IEP implemented by the school district provided Student with less than *de minimus* educational benefit;
 - Whether Student was socially promoted to *** grade despite Student's lack of meaningful progress in reading, spelling, writing, and math and where Student's grades were not a fair measure of Student's progress in meeting IEP goals and objectives;
8. Whether the IEP (designed at the May ***, 2017 ARD and finalized on July ***, 2017) proposed for the upcoming 2017-18 school year or any reiteration or change of it since the request for due process, is procedurally compliant, and reasonably calculated to provide Student with meaningful educational benefit as follows:

- Lacks present levels of performance
 - Lacks objective baselines on IEP goals so that goals could not be adequately measured
 - Fails to include meaningful *** present levels of performance or goals
 - Includes an inappropriate and confusing math goal that is not based on a baseline of Student's math skills;
 - Fails to provide Student with a sufficient amount of special education instruction
 - Fails to include a coordinated set of activities or *** to assist Student with Student's *** needs;
 - Includes an inappropriate general goal that Student will pass all Student's classes;
 - Continues to provide dyslexia services by school district staff that are not licensed at the *** level in the appropriate area or properly trained in delivery of dyslexia services;
 - Fails to offer Extended School Year services (ESY) for the summer of 2018, and
 - Fails to provide Student with specifically described Assistive Technology (AT) devices as discussed and agreed to by the May ARD;
9. Whether Student will be denied due process if Student cannot pursue claims against the Co-op either as a necessary party or through the liability of the school district for any failures by the Co-op to provide Student with FAPE;
10. Whether the school district's Response is vague and whether the school district should be required to file a more specifically stated answer;
11. Whether the school district's argument the hearing officer lacks jurisdiction over Student's participation in extra-curricular activities is frivolous;
12. Whether the school district's counterclaim is untimely; and,
13. Whether the IEP implemented during the pending due process hearing provided Student with meaningful benefit.

Clarification of Issues Resolved

The hearing officer makes no conclusions of law related to Issue No. 9 above. The hearing officer ruled against Petitioner on Student's Motion to Join the Co-op as a necessary party in this case. That issue is, therefore, preserved in the administrative record for purposes of appeal.

Issue Nos. 10 and 12 are moot and denied as a matter of law. The issues raised by both parties were fully litigated in the due process hearing conducted on November 30-December 1, 2017. There is no need for further clarification of the school district's legal position. The school

district filed its Motion for Partial Dismissal, Ten-Day Response to Complaint and Counterclaim on July 14, 2017. The school district's counterclaim was filed in a timely manner once Petitioner sought an IEE at school district expense as an item of relief in Student's Complaint. *See, 34 C.F.R. § 300.502 (b) (2) (i) (ii)*. All issues raised by both parties were discussed during the initial prehearing telephone conference and clarified and confirmed in Order No. 3 issued on July 26, 2017 and again in Order No. 8 issued on November 8, 2017.

Regarding Issue No. 11, the hearing officer has no authority to make findings or conclusions of law as to whether any claims raised by the school district are frivolous. Such findings and conclusions are related to prevailing party status for purposes of attorney's fees. A special education hearing officer in Texas has no authority to make an award of attorney's fees and, therefore, no authority to make determinations that would support or deny such an award. *34 C.F.R. § 300.517; 19 Tex. Admin. Code § 89.1192*.

Finally, as to Issue No. 13, that issue is resolved to the extent it was litigated as a component of Issue No. 8 – the determination of whether the IEP proposed and then implemented during the 2017-18 school year provided Student with FAPE while this hearing was pending.

B. Respondent's Legal Position and Additional Issues

The school district generally denies the allegations in the Complaint and contends it provided Student with FAPE during the relevant time period including the program proposed and then implemented for the 2017-18 school year. The school district contends Student has processing deficits as a component of Student's specific learning disabilities and disagrees that Student's reading level is as low as alleged by Petitioner. The school district argues Student made the requisite progress and that Student's grades were an accurate reflection of Student's abilities and performance with the support of appropriate accommodations.

The school district raises the following additional legal issues:

1. Whether Student's request for funding two years of compensatory services in the form of *** and any costs associated with remedial classes or instruction constitute punitive damages and punitive damages are not a remedy available under the IDEA; *i.e.*, *** is not a proper form of relief under the IDEA;
2. Whether Student's request for *** is within the jurisdiction of the special education hearing officer in Texas;
3. Whether Student's request not to exclude Student from extra-curricular activities for failing grades is within the jurisdiction of the special education hearing officer in Texas; and,
4. As a counterclaim, whether the school district's FIE dated June ***, 2016 is appropriate within the meaning of the IDEA and, therefore, whether Petitioner is entitled to reimbursement for the cost of an IEE paid for by Student's parents.

IV. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

1. The school district provide Student with one-on-one reading, writing and spelling instruction during the school day from a special education teacher licensed to teach at the *** level and with experience in providing instruction in an Orton-Gillingham method – an appropriate, research-based program;
2. The school district provide Student with one on-one math instruction during the school day tailored to meet Student's unique needs in math;
3. Student will continue to participate in regular education for all Student's other classes and the provision of the one-on-one special education instructional services will not interfere with Student's ability to participate in extra-curricular activities such as *** and ***;
4. The school district will provide Student with an appropriate *** program including *** to assist Student in ***;
5. The *** program will include specific guidance and instruction on the *** and there will be no penalty with regard to Student's participation in extracurricular activities if Student does not receive passing grades in those classes;
6. The school district will revise Student's IEP to include all the requested relief stated above

with an accurate recitation of Student's PLAAFPs for each IEP goal and objective, an objectively measurable baseline, and will not include passing grades as the sole measure of Student's progress;

7. An ARD will convene within ten days from the date of the Decision of the Hearing Officer for the purpose of revising the IEP;
8. The school district will provide Student with compensatory educational services in the form of *** and any costs associated with remedial classes or instruction Student requires;
9. The school district reimburse Student's parents in the amount of \$950.00 for the cost of the IEE report as an equitable remedy;
10. The school district conduct a thorough AT evaluation and provide Student with appropriate AT devices, software, and instruction; and,
11. Any other appropriate relief.

In Petitioner's Clarification of Issues Presented and Relief Requested in Response to Hearing Officer Order No. 8 (Petitioner's Clarification), Petitioner included the following statement:

"For purposes of exhaustion, Petitioner Parents note that they have paid for evaluation and expert costs for Dr. *** (***) and ***; they note that the Hearing Officer does not have jurisdiction to award reimbursement of expert costs but a federal court may pursuant to Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act."

B. Respondent's Requested Relief

Respondent requests dismissal of Petitioner's requests for relief for *** as an impermissible form of punitive damages. Respondent contends monetary damages are not an available remedy under the IDEA. Respondent also requests dismissal of Petitioner's request for *** as outside the hearing officer's jurisdiction. Finally, Respondent requests dismissal of Petitioner's request for compensatory relief in the form of school district *** (including both tuition and costs of remediation) as an impermissible form of monetary damages under the IDEA. In its counterclaim, Respondent asserts its evaluations were appropriate, and Petitioner is, therefore, not entitled to reimbursement for the cost of any IEEs secured at parental expense.

V. CLAIMS OUTSIDE HEARING OFFICER'S JURISDICTION

The jurisdiction of a special education hearing officer in Texas is strictly limited to claims arising under the IDEA. Specifically, a hearing officer has the authority to determine claims related to the identification, evaluation, or educational placement of a student with a disability or the provision of a FAPE to the student. *34 C.F.R. §§ 300.507; 300.511; 19 Tex. Admin. Code §§ 89.1151 (a), 89.1170.*

The Complaint clearly asserts claims arising under the IDEA and its implementing federal and state regulations. However, in Petitioner's Clarification filed on November 13, 2017, Petitioner states Student's intent to secure reimbursement under Section 504 of the Rehabilitation Act of 1973 (Section 504) for the cost of two of Petitioner's experts who prepared reports and testified at the due process hearing. The hearing officer has no jurisdiction to resolve claims or make an award under any law other than the IDEA. Therefore, to the extent Petitioner seeks an award under Section 504 that request must be dismissed as outside the jurisdiction of the hearing officer.

VI. FINDINGS OF FACT

1. Student has attended school in the school district since ***. Student first qualified for special education services as *** with ***. In 2014 when Student was in *** grade, Student met eligibility for special education services as a Student with Other Health Impairment (OHI) based on Attention Deficit Hyperactivity Disorder (ADHD) and as a student with a Specific Learning Disability (SLD) in the areas of basic reading and reading comprehension. Student continued to qualify for services as a student with ***. The school district added "co-occurring dyslexia" to the SLD classification on the basis of a July ***, 2014 private evaluation that identified Student as a student with dyslexia.¹
2. Dyslexia is a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and poor spelling and decoding abilities. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.² Characteristics of dyslexia include: (i) difficulty reading words in isolation; (ii) difficulty accurately decoding unfamiliar words; (iii) difficulty with oral reading (slow, inaccurate, or labored); and (iv) difficulty spelling.³

¹ Respondent's Exhibits 3 and 38 (referred to hereafter as R. __ or R. __ at __).

² Petitioner's Exhibit 37 at 13, 108 (referred to hereafter as P. __ or P. __ at __).

³ P. 37 at 13.

3. In 1986 the Texas State Board of Education first directed the Texas Education Agency (TEA) to prepare a dyslexia handbook (Dyslexia Handbook) that addressed the assessment and instructional needs of students with dyslexia. The Dyslexia Handbook has been revised over the years in response to new legislation and research. The Dyslexia Handbook provides guidelines to school districts in identifying and serving students with dyslexia. The Dyslexia Handbook was revised most recently in 2014.⁴
4. Student's cognitive abilities fall within the low-average to average range.⁵ Student falls within the average range for written expression, sound-symbol correspondence, and reading comprehension with deficits in the areas of decoding, fluency, math calculation and math problem solving.⁶
5. The school district is a member of the Co-op under a shared services arrangement between seven school districts. The Co-op provides special education services, such as conducting evaluations, to the seven member school districts.⁷ One of the member school districts acts as the fiscal agent for the Co-op. Federal funds for special education services flow from TEA to the member school districts through the Co-op fiscal agent.⁸
6. Student was a *** grader in the 2015-16 school year at ***.⁹ Student was eligible for special education services as a student with OHI (based on ADHD), SLD in basic reading skills co-occurring with dyslexia and *** based on ***.¹⁰ Student's parents filed a request for a due process hearing on November 30, 2015 (the prior case) and received a favorable decision on May 23, 2016.¹¹ The school district was ordered to provide Student with compensatory services in the form of 1:1 tutoring using an Orton-Gillingham program delivered by a dyslexia specialist. Orton-Gillingham uses a multisensory learning technique to teach reading, spelling, and writing to students with dyslexia. The compensatory services were to be provided outside the regular school day and completed by the first day of the 2017-18 school year.¹²
7. The school district was also ordered to provide Student with direct dyslexia instruction during the school day for the 2016-17 school year using an Orton-Gillingham program that met the requirements of the Dyslexia Handbook. The services were to be provided

⁴ P. 37 at 5.

⁵ P. 16; I at 249.

⁶ P. 16 at 14.

⁷ Transcript Volume I at pages 66-67 (referred to hereafter as I. _ at _).

⁸ I at 103-105.

⁹ R. 38.

¹⁰ Joint Exhibit 1, page 1 (referred to hereafter as J. __ at __); J. 3 at 1.

¹¹ P. 41; R. 38.

¹² P. 41 at 39; II at 487.

- for 45 minutes/day, five days a week, in a *** setting to address Student's need to improve reading, decoding, morphology, and writing skills.¹³ Morphology is the use of prefixes and suffixes and root words to determine word meaning.¹⁴
8. An annual ARD met on June ***, 2016. Student was *** at the time and finishing the *** grade.¹⁵ Student's parents attended the ARD. ***.¹⁶ The purpose of the annual June 2016 ARD was to review Student's educational program, discuss Student's schedule for the upcoming 2016-17 school year, conduct *** planning, review the decision of the hearing officer in the prior case, consider Student's need for ESY services, and discuss evaluations to be conducted over the summer.¹⁷ Summer compensatory dyslexia services ordered in the prior case were to be scheduled with Student's parents outside the ARD process.¹⁸ The June 2016 ARD addressed Student's PLAAFPs in the following areas: physical, behavioral, discipline, functional, and academic.¹⁹
 9. As a *** grader, Student did not meet the state standard on the State of Texas Assessments of Academic Readiness (STAAR) *** exams ***. The STAAR tests are based on the Texas Essential Knowledge and Skills (TEKS) - the state-mandated curriculum. The TEKS contains the content and skills students need to learn in order to make academic progress from year to year and to succeed in college and careers. ***.²⁰
 10. The June ***, 2016 ARD agreed Student would take the summer 2016 administration of the STAAR tests. Those results would be reviewed at a subsequent ARD meeting to be scheduled prior to the beginning of the 2016-17 school year.²¹ Student did not pass the 2016 summer STAAR ***.²²
 11. *** and planning were discussed prior to the beginning of the June 2016 ARD. A *** was included as a supplement to the June 2016 ARD documents. The *** addressed student's involvement in Student's ***, parental participation in the ***, *** options, a list of the *** evaluations conducted, Student's *** goals and objectives, *** goals and objectives, and circumstances for ***.

¹³ P. 41 at 39.

¹⁴ II. at 508.

¹⁵ J. 1 at 1; R. 38.

¹⁶ J. 1 at 21, 27, 30.

¹⁷ J. 1 at 21, 25.

¹⁸ J. 1 at 21.

¹⁹ J. 1 at 2.

²⁰ R. 19 at 1-3.

²¹ J. 1 at 21; R. 19 at 1-3.

²² R. 19 at 4-6.

12. The June 2016 *** included measureable *** goals based on age-appropriate assessments in the following areas: *****. The plan referred to Student's Schedule of Services in Student's IEP as the set of ***. Because Student demonstrated *** Student did not need support in that regard for ***.²³
13. The school district conducted *** evaluations for *** at the June 2016 ARD. These included parent, teacher, and student ***. In Student's *** Student expressed an interest in ***.
14. Student also ***. Student also confirmed ***. ***.²⁴
15. Student's mother completed the parent interview on June ***, 2016. She confirmed Student ***. Student was cooperative and able to work with others, had assigned chores around the house and did them without being reminded, obeyed the rules, and was mature for Student's age. Student's mother's expected Student ***. Student's mother did not want Student to ***.²⁵
16. Student's *** teacher completed the teacher interview. Student was either above average or excellent in the following: ***, turns in assignments on time, completes assigned tasks, is neat and clean in appearance, ***, seems confident of Student's ability to work with others, shows ability to adapt to new situations, shows a positive, overall attitude, is honest, responds well to authority, prefers activities in groups, and adapts socially to accommodate peers.
17. Student was average in the following: organizes time and materials, displays interest and enthusiasm for tasks, displays special abilities in one or more areas (none listed), and displays special interests in one or more areas (none listed). Student was fair in only two areas: produces neat and orderly work and prefers individual activities.²⁶
18. At the June 2016 ARD the school district provided Student's parents with information from ***. The ARD documents also contained a reference to a website for downloading a document called ***.
19. Student was following the ***. The June 2016 ARD discussed ***. The school district offered Student *** review with a math teacher as ESY services. The ARD agreed Student needed ***.²⁷ *** was offered from June through July. Student's parents preferred the *** summer program be completed in June.²⁸

²³ J. 1 at 8, 21.

²⁴ J. 1 at 8-12.

²⁵ J. 1 at 11.

²⁶ J. 1 at 6, 12.

²⁷ J. 1 at 21, 25.

²⁸ J. 1 at 25, 8-12.

20. The June 2016 ARD proposed conducting evaluations for math achievement and *** to collect more information to determine Student's needs and plan an appropriate school program for 2016-17. The proposed evaluation was to address concerns over Student's academics, speech, and *** needs. An OHI form to be completed by Student's physician was previously provided to Student's mother in March 2016. Student's mother consented to the proposed assessments at the June 2016.²⁹
21. The June 2016 ARD also discussed the passing standards required to participate in ***. In *** grade Student was not allowed to participate in an event *** because of failing grades. The school district agreed to contact the *** to clarify whether an ARD could modify eligibility standards in response to information from Student's mother.³⁰
22. The June 2016 ARD confirmed Student was under the care of a physician. Student's mother was provided with another OHI form to consider adding *** to Student's OHI eligibility.³¹ ***. ***. ***.³² ***. ***.³³
23. The June 2016 ARD reviewed an Individualized Healthcare Plan (IHP) that addressed Student's *** needs related to ***. Student's teachers received the IHP and reviewed it with the nurse. The school nurse was available to any teacher or staff who needed clarification on the IHP. A copy of the IHP was included in the June 2016 ARD documents. Student's mother provided the June 2016 ARD with a list of recommended accommodations related to Student's ***. Those proposed accommodations were also to be reviewed and considered at the August 2016 ARD before the beginning of the 2016-17 school year.³⁴
24. The June 2016 ARD documents included a PWN page that explained, in some detail, the decisions of the ARD, the basis for the decisions, the options considered and why they were rejected or not, the evaluation procedures, tests, records, and reports used as the basis for the decisions, and other factors relevant to the decisions. A procedural safeguards statement was included with the name and phone number of the Co-op Director as the parental contact for questions or other information to assist parents in understanding the procedural safeguards.³⁵
25. The school district completed a FIE on June ***, 2016. The purpose of the June 2016 FIE was to conduct testing in the areas of math and ***.³⁶ The June 2016 FIE was

²⁹ J. 2.

³⁰ J. 1 at 25; I at 131, 139-40, 336-37.

³¹ J. 1 at 2.

³² I. at 152.

³³ I. at 153-54.

³⁴ J. 1 at 2, 3-5.

³⁵ J. 1 at 25-26; I. at 53.

³⁶ J. 3 at 1.

conducted by a speech/language pathologist and an educational diagnostician. A special education and general education teacher were also members of the FIE multi-disciplinary team. Standard measurement procedures were used for all tests administered. A variety of sources of information were used.

26. The FIE was conducted in Student's primary language of English. The assessment instruments used were also: (i) selected and administered so as not to be discriminatory; (ii) administered in the form most likely to yield accurate information as to Student's academic, developmental, and functional performance; (iii) used for the purposes for which they were valid and reasonable; (iv) administered by trained and knowledgeable personnel; and (v) administered in accordance with instructions by the assessments producers.
27. The instruments used were tailored to assess Student's specific areas of educational need in math and speech/language. The instruments were selected and administered to accurately reflect Student's aptitude or achievement level. Student was assessed in all areas of suspected disability identified by the June 2016 ARD. The FIE was sufficiently comprehensive to identify Student's special education and related service needs.³⁷
28. In June 2016, Student's levels of proficiency in receptive and expressive language skills were average. ***. Student's core language abilities were within the average range for Student's age. Student was able to formulate complete, semantically and grammatically correct spoken sentences of increasing length and complexity. Student demonstrated the capacity to integrate semantic, syntactic, and pragmatic rules and constraints while using working memory.³⁸ By June 2016, Student's *** was age appropriate.³⁹ In sum, Student's receptive and expressive language, pragmatic language, articulation, voice, and fluency were age appropriate.⁴⁰
29. Student scored below what was expected for Student's age on the math component of the June 2016 FIE. Due to test requirements, Student was not allowed ***. This impacted Student's math performance since Student was accustomed to ***. Student's strengths in math included: ***. However, Student demonstrated weaknesses in math problem solving, including with a variety of word problems.⁴¹
30. Student exhibited some difficulties in ***. In sum, Student demonstrated deficits in math problem solving, mathematics calculations (numerical operations) and math fluency.⁴²

³⁷ J. 3.

³⁸ J. 3 at 2.

³⁹ J. 3 at 3.

⁴⁰ J. 3 at 4.

⁴¹ J. 3 at 4.

⁴² J. 3 at 5.

31. The June 2016 FIE confirmed Student's continued eligibility for special education as a student with OHI (based on ADHD) and a SLD in basic reading skills (co-occurring with dyslexia), and reading comprehension. Based on the results of the June 2016 FIE, *** Student's *** and speech/language skills were age appropriate ***,⁴³
32. Student was provided dyslexia compensatory services in summer 2016.⁴⁴ The dyslexia teacher implemented a specific dyslexia program called the Dyslexia Intervention Program (DIP). The dyslexia teacher was trained in the DIP and qualified to teach students with dyslexia in Texas, consistent with the requirements stated in the Dyslexia Handbook.⁴⁵ The DIP is a multi-sensory program similar to Orton-Gillingham.⁴⁶
33. Texas does not have a certification requirement specific to teachers providing intervention to students with dyslexia. Each school district may consider the needs of its students and the qualifications of its teachers in delivering services to students with dyslexia.⁴⁷ Classroom teachers who have received dyslexia training may provide dyslexia services to students with dyslexia in Texas. However, the training must include implementation of instructional strategies that use individualized, intensive, multisensory, and phonetic methods.⁴⁸
34. Texas offers a license as a dyslexia therapist or as a dyslexia practitioner through the Texas Department of State Health Services. In Texas, a license as a dyslexia practitioner is voluntary for kindergarten through 12th grades (K-12). K-12 educators can provide services to students with dyslexia without being licensed as a therapist or practitioner under the Texas Occupational Code so long as they receive the proper training in the instructional strategies and multisensory methods required in the Dyslexia Handbook.⁴⁹
35. Student completed *** during the summer of 2016. Student was cooperative, did what was asked willingly and never refused to work. At the beginning of the summer, Student struggled to some degree with ***. As the lessons progressed, Student's *** skills improved. Because *** was a challenge for Student, Student also worked on *** that summer, and Student's ***.⁵⁰
36. At parental request, the school district transmitted a set of proposed IEPs for the 2016-17 school year to Student's parents on August ***, 2016.⁵¹ Two ARD meeting notices were

⁴³ J. 3 at 3, 5-6, 8.

⁴⁴ R. 32 at 2; II at 488-89.

⁴⁵ R. 32 at 1; II at 484-86, 536-39.

⁴⁶ II at 486-87.

⁴⁷ P. 37 at 91.

⁴⁸ P. 37 at 92.

⁴⁹ P. 37 at 51.

⁵⁰ II. at 496-97.

⁵¹ R. 6.

sent to Student's parents for an ARD scheduled for August ***, 2016. The notice identified the purpose of the ARD, the set of evaluation procedures, and the test records and reports to be reviewed and discussed.⁵² The first notice included a Procedural Safeguards statement with the name and phone number of the Co-op Director as the parental contact for questions or other information to assist parents in understanding the procedural safeguards.⁵³ A set of procedural safeguards was mailed with the ARD Notice.⁵⁴ ***.⁵⁵

37. An ARD convened on August ***, 2016, before school began. Student was classified as a *** grader for the 2016-17 school year.⁵⁶ The purpose of the August 2016 ARD was to review the results of the summer 2016 testing and review proposed IEPs for the 2016-17 school year. Student's parents attended the ARD. The results of the June 2016 FIE were reviewed confirming Student's eligibility for special education. Student's parents disagreed with the FIE conclusion that Student no longer needed ***.⁵⁷
38. Measureable annual IEP goals and objectives were proposed for the 2016-17 school year. These included goals and objectives for ***, Math, Dyslexia Services, and Behavior.⁵⁸ A PLAAFPS statement was included for each set of goals and objectives. The data sources reviewed in developing the PLAAFPS for the ***, Math, and Behavior goals and objectives were STARR results, report cards, and teacher input.⁵⁹ The data sources reviewed in developing the PLAAFPS for the Dyslexia goals and objectives were the results of testing conducted in February 2014 and March 2016.⁶⁰
39. The *** IEP identified Student's areas of need as ***, and ***. The *** IEP also referred to the *** TEKS related to Student's areas of need.⁶¹ The *** academic goals and objectives addressed Student's need to improve ***, and *** in reading and writing. The *** goals and objectives were measureable and objective stated in terms of a *** week period of instruction with objective mastery levels for each goal and objective (such as correct responses in measuring ***).⁶²
40. The TEKS related to Student's areas of need in Math were also stated in the Math IEP. The academic goals and objectives for Math addressed Student's need to improve

⁵² J. 4 at 25-27.

⁵³ J. 4 at 26; I. at 53.

⁵⁴ J. 4 at 22.

⁵⁵ J. 4 at 25.

⁵⁶ J. 4 at 1; R. 38.

⁵⁷ J.4 at 22-25.

⁵⁸ J. 4 at 3-11.

⁵⁹ J. 4 at 3-6, 9-10.

⁶⁰ J. 4 at 7-8

⁶¹ J. 4 at 3-4.

⁶² J. 4 at 3-4.

Student's skills working with ***, and overall understanding of mathematics. The Math IEP goals and objectives were measureable and objective stated in terms of a *** week period of instruction with objective mastery levels for each goal and objective (***, tests and teacher observations).⁶³

41. The Dyslexia IEP addressed Student's needs in reading, spelling, and vocabulary. The IEP further identified *** as supports and services to assist Student in mastering the Dyslexia goals. The Dyslexia IEP goals and objectives were measureable and objective stated in terms of a *** week period of instruction with objective mastery levels for each goal and objective (such as ***, tests and teacher observations.)⁶⁴
42. The Behavior IEP addressed Student's need to improve *** and completing tasks independently. The IEP noted Student had difficulty, from time to time, maintaining focus without academic accommodations in place. Behavioral goals included: being prepared and organized for class, completing assignments on time, and turning work in. The Behavior goals and objectives were measureable and objective stated in terms of a *** week instructional period with objective mastery levels for each goal and objective (such as completing daily assignments, class tasks, homework, and ***).⁶⁵
43. All IEP goals and objectives referenced the accommodations Student needed in each of Student's classes to make progress in mastering the goals and objectives. For example, the ***, preferential seating, and proximity control were accommodations to support Student's work on Student's behavioral goals.⁶⁶ Accommodations for math included the ***, teacher checking for understanding, giving Student extra time to complete assignments or tests, oral administration of tests and/or small group administration of tests. There were similar accommodations for ***.⁶⁷
44. An IHP was included in the August ***, 2016 ARD documents. The IHP identified five potential medical issues that might arise at school related to Student's ***. A set of related goals, nursing interventions, and expected outcomes were included in the IHP.⁶⁸ An extensive set of accommodations to meet Student's medical needs at school were agreed upon at the August 2016 ARD. The IHP and set of accommodations were shared with the school nurse and reviewed with Student's teachers.⁶⁹
45. Student's class schedule for *** grade included: *** class.⁷⁰ Student was placed in ***

⁶³ J. 4 at 5-6.

⁶⁴ J. 4 at 7-8.

⁶⁵ J. 4 at 9-10.

⁶⁶ J. 4 at 9.

⁶⁷ J. 4 at 5-6.

⁶⁸ J. 4 at 12-13.

⁶⁹ J. 4 at 22, 24.

⁷⁰ R. 8 at 9, 48.

general education *** with instruction provided by a general education teacher and by a dyslexia specialist in the *** class.

46. Classes were *** long. Student was also placed in *** class. The Schedule of Services included *** minutes of special education consult *** every *** weeks.⁷¹ The August 2016 ARD discussed Student's eligibility for participating in *** extra-curricular activities. The ARD agreed on a modified passing grade standard *** in order to participate ***.⁷²
47. PWN was included in the August 2016 ARD documents. The PWN included a fairly detailed description of the ARD decisions, why the decisions were made, the options considered and why they were or were not rejected, the evaluation procedures, tests, records or reports used as the basis for ARD decisions, and other relevant factors. The PWN also included a procedural safeguards statement with the name and phone number of the Co-op Director as the parental contact for questions or more information to assist parents in understanding the procedural safeguards.⁷³ The IEP discussed and reviewed at the August 2016 ARD was implemented during the 2016-17 school year.⁷⁴
48. A special education teacher served as Student's case manager during the 2016-17 school year. As case manager, she was responsible for preparing portions of Student's IEPs and the ARD paperwork, monitoring Student's progress ***, and communicating with Student's teachers.⁷⁵ The special education teacher provided the special education consult services for the 2016-17 school year. She consulted with Student's teachers either in person or by email.⁷⁶ She saw no need to recommend a change in the level of consult services stated in Student's prior IEP because the *** minutes of consult every *** weeks was sufficient to monitor Student's progress ***. The special education teacher did not confer with every teacher every week.⁷⁷
49. The special education teacher measured Student's progress towards meeting IEP goals by conferring with teachers, observing Student in the classroom, and reviewing teacher gradebooks.⁷⁸ To prepare for ARD meetings, *** teachers completed teacher input forms. The special education teacher would follow up and confer with the teachers if she needed more information.⁷⁹

⁷¹ J. 4 at 17, 19, 24.

⁷² J. 4 at 22, 24.

⁷³ J. 4 at 24.

⁷⁴ J. 4 at 17; II. at 501.

⁷⁵ II. at 565, 567.

⁷⁶ II. at 567.

⁷⁷ II. at 592-94, 596.

⁷⁸ II. at 568-71, 603-05, 606-07.

⁷⁹ II. at 571; R. 7.

50. The special education teacher was also Student's *** teacher during the 2016-17 school year. *** students in *** class were preparing to re-take the *** STAAR ***. The special education teacher provided direct instruction, ***, group assignments, some hands-on activities, and some individual practice. The special education teacher used materials that were somewhat different than what was used in a traditional classroom.⁸⁰
51. The school district continued to provide Student with *** compensatory dyslexia services during the 2016-17 school year. The services were provided by the same teacher who provided the compensatory dyslexia services in the summer of 2016. The compensatory services were provided in two sessions: one before school beginning at 7:30 am until 8 am and then after school when the bell rang – around 3:30 pm until 4 pm. Student attended only *** minutes of the morning sessions and the *** minute sessions in the afternoons.⁸¹ At mid-semester, the parties agreed to omit the afternoon sessions following an agreement between Student's parent and the *** principal.⁸²
52. During the 2016-17 school year, Student also received dyslexia reading instruction during the school day from another dyslexia specialist for an *** minute class period. Both dyslexia teachers used the DIP, but it became confusing with one teacher beginning a lesson and the other attempting to pick up where the other teacher left off.⁸³ The teachers adjusted their instruction. The teacher providing the compensatory dyslexia services reinforced the concepts and lessons taught in the dyslexia class using material from *** *** textbooks or current events from a website to work on *** and *** skills. Student's ability to *** independently improved by the end of the 2016-17 school year.⁸⁴ The two teachers worked together to report on Student's progress towards meeting the dyslexia IEP goals.⁸⁵ Student finished the DIP by the end of summer 2017.⁸⁶
53. On March 7, 2017 TEA issued a letter to resolve a parental Complaint that the hearing officer's decision in the prior case had not been properly implemented by the school district. TEA found the school district had not provided all of the compensatory services ordered and the IEP lacked goals to specifically address *** and *** as ordered by the hearing officer in the prior case.
54. TEA directed the school district take corrective action by convening an ARD meeting to revise Student's Dyslexia IEP to include specific goals for the direct instruction of *** and ***. TEA also directed the school district to provide updated documentation to show

⁸⁰ II. at 565-67.

⁸¹ II. at 497-98.

⁸² II. at 498-99.

⁸³ II. at 500-03.

⁸⁴ II. at 505-07, 521-25; R 22; R. 23; R. 24; R. 28.

⁸⁵ II. at 502.

⁸⁶ II. at 533.

continued provision of the *** compensatory dyslexia services.⁸⁷

55. An ARD convened on March ***, 2017, to review Student's dyslexia program and comply with the TEA corrective action.⁸⁸ A set of new dyslexia IEP goals were designed at the March 2017 ARD that specifically addressed Student's need to work on *** and ***. The ARD agreed on the revised set of dyslexia goals for the remainder of the 2016-17 school year through March 2018.⁸⁹
56. The March 2017 ARD also planned for Student's next annual ARD. Student's mother was provided with an OHI form to be completed by Student's physician to confirm continued eligibility as a student with OHI. The March 2017 ARD also planned to conduct *** assessments and identify Student's *** areas of strength and need. Student's mother reported Student expressed interest in ***. Student's mother provided consent for the assessments and to ***, to future ARD meetings.⁹⁰
57. In preparation for Student's annual ARD in May 2017 *** Student's teachers provided feedback on Student's performance to the special education teacher. In ***, Student's classroom performance was quite consistent throughout the year. Student exhibited a "great attitude" although was also easily distracted in class. Student required multiple reminders to stay on task and turn in work but ultimately got all Student's work done. There was no difference in Student's classroom performance after breaks.⁹¹ In ***, Student was able to return to class and participate in the curriculum commensurate with non-disabled peers after extended school breaks.⁹²
58. In ***, Student maintained the same level of attentiveness all year with regard to ***. Although Student did not pass the summer or fall 2016 STAAR ***, Student worked very hard during the 2016-17 school year and passed the spring 2017 STAAR *** with a very decent score. Taking tests in a small group was an effective accommodation – Student was not as embarrassed when the teacher read question and answer choices as an accommodation in a small group setting.⁹³
59. Student's annual ARD convened on May ***, 2017. In addition to the annual review, the purpose of the ARD was to discuss Student's *** needs, review additional assessment data, and conduct a Review of Existing Educational Data (REED). The May ***, 2017 ARD reviewed the *** evaluation dated June ***, 2016, and the physician's OHI form dated March ***, 2017.

⁸⁷ P. 43 at 2-3.

⁸⁸ J. 5 at 6; R. 38; Vol. II at 507-08.

⁸⁹ J. 5 at 2, 6, 8.

⁹⁰ J. 5 at 6; I. at 227; R. 8 at 56.

⁹¹ R.7 at 1.

⁹² R. 7 at 3.

⁹³ R.7 at 2; R. 19 at 7, 10, 21.

60. The school district sent Student's parents two IEP notices that included a statement of procedural safeguards with the Co-op Director's name and phone number as the contact person for questions or more information about the procedural safeguards. The school district also gave Student's parents an updated version of the Parent's Guide to the Admission, Review & Dismissal Process handbook at the May 2017 ARD.⁹⁴
61. Student's eligibility for special education was again confirmed as a student with OHI and SLD for basic reading skills co-occurring with dyslexia, reading comprehension, math calculation and math problem solving.⁹⁵ Student's parents were provided with the OHI form at the May 2017 annual ARD so Student's physician could confirm the diagnosis of *** for the upcoming 2017-18 school year. The school district agreed the form could be completed at parent convenience.⁹⁶ On June ***, 2017 Student's physician signed the OHI form confirming Student met OHI criteria as a student with ***.⁹⁷
62. Student's 2016-17 grade report was reviewed at the May 2017 annual ARD. Student was generally successful in the classroom passing each *** weeks with at least average grades. The grades were consistent with the teacher reports to the special education teacher as Student's case manager.⁹⁸ Student was responsible for completing the same assignments as Student's classmates. Student earned the grades Student received and kept up with Student's classmates.⁹⁹
63. Student's final grades for the fall semester for the 2016-17 school year were: ***. Student's final grades for the spring semester for the 2016-17 school year were: ***. No grades were assigned to the Dyslexia class.¹⁰⁰
64. As a *** grader, Student was required to take the *** STAAR ***. Accommodations for Student in taking the *** STAAR approved by TEA included: use of a dictionary, extra time, oral administration, and small group administration.¹⁰¹ Student was absent for the spring administration of the *** STAAR *** but passed the exam on Student's first try in the summer 2017.¹⁰²
65. IEP progress reports towards mastery of IEP goals and objectives were issued on

⁹⁴ R. 8 at 53, 58-65.

⁹⁵ R. 8 at 1-2.

⁹⁶ R. 8 at 2, 53.

⁹⁷ J. 7 at 2.

⁹⁸ II. at 572; R. 8 at 7.

⁹⁹ II. at 573, 640, 648-49.

¹⁰⁰ R. 8 at 7-8.

¹⁰¹ R. 8 at 50, 53; II at 643.

¹⁰² R. 19 at 25; II at 645.

September ***, 2016, November ***, 2016, December ***, 2016, February ***, 2017, April ***, 2017, and May ***, 2017. Each progress report stated the level of Student's mastery of each IEP goal and objective for each reporting period. The progress reports included a statement as to whether Student was expected to reach mastery level by the next annual IEP review. IEP progress reports were provided for Dyslexia goals and objectives, general study skills, writing skills, Behavior, English, and Math.¹⁰³

66. A goal was discontinued and re-written for the upcoming 2017-18 school year to adjust the mastery level when Student's performance at the mastery level was somewhat inconsistent. The mastery level for some behavioral goals was adjusted to a higher rate to continue monitoring for behavioral consistency across all classes. Mastery of an IEP goal is reached if the student performs at the mastery rate consistently for a period of time as the rigor and difficulty in academic requirements increases over the course of the school year.¹⁰⁴
67. The May ***, 2017 ARD included a recitation of Student's PLAAFPs in the following areas: physical, behavioral, discipline, functional, and academic. The PLAAFPs were not stated in terms of percentages of skill level or numerical baselines. Instead the PLAAFPs were verbal statements about Student's abilities in those areas.¹⁰⁵ The PLAAFPs were used by the school district to propose new IEP goals and objectives for ***, Math, and Dyslexia services. A Functional IEP was also designed with goals and objectives targeting Student's study skills, such as completing and turning in assignments.¹⁰⁶
68. An IHP was again included as a component of Student's educational program to address Student's medical needs related to ***.¹⁰⁷ An extensive set of accommodations to meet Student's medical needs were also included in the May 2017 ARD documents.¹⁰⁸ Student's physician has a hard time reconciling what Student reports feeling and what is objectively measured and seen – Student appears quite healthy in terms of the objective markers.¹⁰⁹ ***.¹¹⁰ ***.¹¹¹ ***.¹¹²
69. Student's physician does not expect any impact throughout Student's life due to ***. Student's physician has never placed any restrictions on Student in terms of academics or

¹⁰³ R. 8 at 19-37; II at 574.

¹⁰⁴ II. at 577-78, 610.

¹⁰⁵ R. 8 at 2.

¹⁰⁶ R. 8 at 2, 38-47.

¹⁰⁷ R.8 at 3-6.

¹⁰⁸ R. 8 at 5-6.

¹⁰⁹ I. at 156.

¹¹⁰ I. at 157-58, 161.

¹¹¹ I at 160-61, 166.

¹¹² I. at 161.

- *** and expects Student will eventually ***.¹¹³ Student is handling Student's *** at school very well. Although Student missed some time at school for the medical appointments, those absences did not impact Student's education or academic progress.¹¹⁴
70. *** were also discussed at the May 2017 ARD. A representative from the *** was invited but did not attend. The ARD planned to continue to invite an area *** representative to future ARD meetings. The school district planned to send a request to the *** to encourage attendance by the *** area representative at future meetings.¹¹⁵
71. Student completed another *** on April ***, 2017. Student confirmed continued interest in ***. Student also reported a new interest ***. Student was in the *** grade and was *** old at the time of the ***. ***. Student reported doing chores at home, enjoyed ***, hanging out with friends, ***, and spending time with family ***. Student participated in ***. ***.¹¹⁶
72. School district staff asked Student's mother to complete another *** parent interview during the May 2017 ARD. Student's mother completed the interview as requested. At home, Student was cooperative and able to work with others, seemed to have a positive attitude about school, had assigned chores at home but needed to be reminded to complete them, and was now interested ***. Student usually obeyed rules and was mature for Student's age. Student's mother expected Student ***. Student's mother was not interested in Student ***.¹¹⁷
73. Student's *** teachers also completed *** for the purpose of ***. At school, Student was able to complete work and turn it in, get along with others, responded well to authority, was honest, had an overall positive attitude at school, and was social. Student had some problems producing neat and orderly work and organizing materials. Student needed reminders to stay on task. Student continued to prefer working in group activities. Student displayed a special interest in "****." ¹¹⁸
74. The May ***, 2017 ARD completed a *** for Student. The *** considered Student's preferences and interests based on Student's responses and the information from both the student and parent ***. *** but was not on campus because it was an early release day. Instead, parental involvement in Student's *** was ensured through the parent interview and the attendance of Student's parents at the ARD meeting.

¹¹³ I. at 162-63.

¹¹⁴ II at 426-27, 528, 552, 582, 675-66.

¹¹⁵ R. 8 at 53.

¹¹⁶ R.8 at 11-13, 53.

¹¹⁷ R. 8 at 14, 53-54.

¹¹⁸ R. 8 at 16.

75. The ARD considered ***. The *** noted Student ***. The *** noted Student had already ***. The three sets of interviews from Student, Student's mother, and the two teachers comprised the *** evaluation for purposes of the May 2017 ***.
76. The ARD considered Student's ***, noted Student's past ***. The *** noted Student demonstrated *** and did not need specific instruction in ***.
77. The *** training goal was: "****." The education goal was stated as: "****." *** realistic goal because Student is making educational progress commensurate with Student's peers by working on grade level material, passing Student's ***.¹¹⁹
78. The *** goal was: "****." The *** referred to Student's Schedule of Services -including Student's ***.¹²⁰ The May 2017 ARD agreed to reconvene to develop an agreed class *** and set of classroom accommodations prior to the start of the 2017-18 school year.¹²¹
79. The *** was included in the May 2017 ARD documents. Student continued to ***.¹²² Student's ***, ***.¹²³ By the end of the fall semester of the 2016-17 school year, Student ***.¹²⁴
80. The May 2017 annual ARD reviewed a REED, the *** assessment data, and the March 2017 OHI form from Student's physician. Student's parents reported they secured an IEE. The school district requested a copy of the IEE so the results could be included in a new draft of the REED. Student's parents were given a blank OHI form to be completed by Student's physician to confirm the ***. The results of the IEE were included in a revision of the REED.¹²⁵
81. At the May 2017 annual ARD Student's mother expressed concerns about Student's math deficits, ***. The ARD agreed to design new math goals prior to the start of the upcoming 2017-18 school year based on Student's math disability – the goals could be added to Student's IEP through an ARD addendum assuming the parties agreed.¹²⁶
82. New reading IEP goals were proposed for *** and Dyslexia at the May 2017 ARD based on Student's PLAAFPs. The *** reading goals addressed Student's basic reading and

¹¹⁹ II. at 574; R. 8 at 11.

¹²⁰ R. 8 at 11.

¹²¹ R. 8 at 53.

¹²² R. 8 at 18, 53.

¹²³ R. 8 at 18.

¹²⁴ R. 8 at 17.

¹²⁵ R. 8 at 53; R. 9 at 9-11; I. at 232.

¹²⁶ R. 8 at 53.

- comprehension needs. Progress reports were to be provided every three weeks. The reading goals referenced the TEKS standard for *** graders.¹²⁷ The May 2017 ARD confirmed Student had access to an iPad and keyboard for note-taking in Student's classes. A Co-op staff member was scheduled to meet with Student before school started in August to teach Student how to use the iPad for *** notes.¹²⁸
83. An IEP for Dyslexia services was also proposed at the May 2017 ARD. The Dyslexia IEP goals and objectives addressed Student's needs to further develop *** based on Student's PLAAFPs. The following data sources were used to develop Student's PLAAFPs for the dyslexia services: DIP mastery checks and daily work, classroom observation, and additional student work. A dyslexia specialist was designated to provide the dyslexia services instruction. Progress was to be reported every six weeks.¹²⁹ The Dyslexia goals also addressed Student's *** needs.¹³⁰
84. The parties agreed to suspend the May ***, 2017 ARD so Student's parents could meet with the *** principal for further discussions regarding math goals and objectives, dyslexia instruction, and Student's ***. The purpose of the meeting was to resolve the disputed issues through dialogue between Student's mother and the principal and then reconvene prior to the beginning of the 2017-18 school year.¹³¹
85. Student's mother and the principal reached agreements regarding Student's *** for the 2017-18 school year including additional math instruction, a summer schedule for compensatory dyslexia services, and the AT training. Student's mother shared her concerns and ideas about the dyslexia program and concerns about Student's math deficits with the principal.¹³²
86. The May ***, 2017 ARD documents included PWN to Student's parents. The PWN summarized the decisions of the ARD in some detail, stated why the decisions were made, the options considered and why they were rejected or not, the evaluation procedures, tests, records and reports used as the basis for the ARD decisions, and parental participation at the ARD as a factor relevant to the decisions. The issues to be resolved noted in the PWN were the following: (i) additional goals needed to address Student's math disability; (ii) dyslexia program options to be developed and communicated with parents and a decision made before the start of school in August; and, (iii) Student's *** and set of accommodations for the 2017-18 school year to be developed and agreed upon prior to the start of school in August 2017.¹³³

¹²⁷ R. 8 at 39-40.

¹²⁸ R. 8 at 53.

¹²⁹ R. 8 at 43-45

¹³⁰ R. 8 at 45.

¹³¹ R. 8 at 56; II at 432-33.

¹³² R. 10.

¹³³ R. 8 at 56.

87. On June ***, 2017 Student's mother sent the school district Student's *** for the 2017-18 school year to be confirmed in an ARD prior to the start of school in August 2017. ***. Student also ***.¹³⁴
88. The educational diagnostician is the designated staff person who prepares the ARD documents. The diagnostician makes changes and revisions as the meeting evolves using software known as "SucessEd." The diagnostician typically types up the deliberations pages after the ARD meeting has ended.¹³⁵ She sent ARD documents to parents via email after ARD meetings.¹³⁶
89. On June ***, 2017, the educational diagnostician sent Student's mother an updated copy of the May 2017 deliberations pages confirming modification of the passing rate of *** in order to *** for the 2017-18 school year.¹³⁷
90. The Co-op Director met with Student twice in August 2017 before school started. The Director showed Student how to ***. Student was asked to ***. ***. ***.¹³⁸
91. The school district provided Student with *** – one for each *** class. *** were also provided and explained to Student. Student appeared comfortable using the device.¹³⁹ There were no specific IEP goals designed for Student's use of ***.¹⁴⁰ It does not appear Student utilized *** during the current 2017-18 school year.¹⁴¹
92. A follow up ARD convened on August ***, 2017.¹⁴² By this time, Student had passed the summer 2017 administrations of the STAAR *** exams.¹⁴³ The purpose of the ARD was to complete the May 2017 ARD. The components of the May 2017 ARD remained in place. The August ***, 2017 ARD made some revisions to the May 2017 ARD related to *** and accommodations.¹⁴⁴ The August 2017 REED confirmed Student's continued eligibility as a student with OHI based on ADHD and ***, and as a student with SLD in basic reading, reading comprehension, math calculation, and math problem solving with

¹³⁴ R. 10 at 9.

¹³⁵ I. at 175, 207, 230.

¹³⁶ P. 29 at 1; R. 17; I at 215, 334.

¹³⁷ R. 8. at 66-68; I at 174.

¹³⁸ I at 57.

¹³⁹ I at 58-59.

¹⁴⁰ I at 60.

¹⁴¹ I at 60.

¹⁴² R. 11; R. 38; II at 433.

¹⁴³ R. 19 at 17-19, 25

¹⁴⁴ R. 11, R. 15 at 1-3.

co-occurring dyslexia.¹⁴⁵

93. Because Student completed the DIP by this point, the parties selected a new dyslexia program for the 2017-18 school year.¹⁴⁶ To address a parental concern, the school district hired a certified reading teacher for the Dyslexia class so Student could *** this school year.¹⁴⁷ The parties agreed on Student's *** for the 2017-18 school year: ***.
94. At the August ***, 2017 ARD, the school district initially proposed providing Student's dyslexia services in ***. However, the school district agreed to *** dyslexia instruction in a *** setting for the 2017-18 school year at parental request.¹⁴⁸ At the August ***, 2017 ARD, Student's parents also requested math instruction in a 1:1 setting. The principal disagreed with the request because a 1:1 setting was too restrictive for Student given Student had passed *** and was progressing on grade level with accommodations.¹⁴⁹ However, in response to parental concerns about Student's math skills, the school district added a math-intensive class during ***.¹⁵⁰
95. The parties agreed to a 10 day recess of the August ***, 2017 ARD. Following unsuccessful attempts to reconvene, Student's mother notified the school district on August ***, 2017 she no longer agreed to reconvene the ARD because this due process hearing was now pending. The school district provided PWN with the set of the August 2017 ARD documents sent to Student's mother on September ***, 2017. The PWN summarized the decisions of the August ***, 2017 ARD in some detail, stated why the decisions were made, the options considered, why they were rejected or not, the evaluations, procedures, tests, records or reports used as the basis for the ARD decisions, and other relevant factors.¹⁵¹
96. Along with the August 2017 ARD documents the school district sent a proposed IEP amendment to correct a mistake on the schedule of services page of the August ARD documents that inadvertently omitted the special education consult services. The school district continued to provide the special education consult services despite the parent's refusal to agree to the proposed IEP amendment or to convene an ARD for that purpose.¹⁵²

¹⁴⁵ R. 12 at 1, 19, 32.

¹⁴⁶ R. 26; II. at 434.

¹⁴⁷ II. at 435.

¹⁴⁸ II. at 436-37.

¹⁴⁹ II. at 437-38.

¹⁵⁰ II. at 437-39.

¹⁵¹ R. 11 at 1-2, 29, 32-33.

¹⁵² R. 16 at 2.

97. A letter from the principal dated September ***, 2017, was included in the August 2017 ARD documents transmitted to Student's parents. In the letter, the principal asked Student's parents to confirm whether they agreed with the IEP goals and set of accommodations presented at the August 2017 ARD. The school district confirmed it would continue to implement the previous ARD if Student's parents did not agree with the IEP proposed at the August 2017 ARD. The school district also continued to implement the *** agreed to by the parties at the August 2017 ARD. The school district offered another ARD and/or a meeting with the principal to address continuing parental concerns.¹⁵³
98. A teacher certified in *** is the teacher in Student's ***. ***. ***. There are quizzes and online lessons. Students learn to ***. Student works independently about 60% of the time and in a small group about 40% of the time.
99. Student participates well in the *** class. Student performed above average on the quizzes. Overall, Student is well above average when compared with the rest of the class. The *** is not a special education ***. Student's percentage of active engagement in the math program is one of the highest in the class. Student is not shy about asking for help from the math teacher.¹⁵⁴
100. This year Student also receives *** math instruction from the *** teacher in a ***. During the math *** class Student works on ***. The purpose of the math *** is to work on Student's math IEP goals and increase Student's *** skills. The teacher and Student work through each math problem together, processing and correcting any mistakes and identifying successes.¹⁵⁵
101. Another ARD convened on November ***, 2017, without parental participation. The ARD corrected the mistake in the August ARD paperwork that inadvertently omitted the special education consult services. The ARD documents were sent to Student's mother with a letter from the principal explaining the purpose of the ARD and offering to reconvene or discuss further parental concerns.¹⁵⁶
102. The school district partners with ***. ***.¹⁵⁷ ***.¹⁵⁸ ***.¹⁵⁹
103. The school district planned a ***. ***. Student's parents did not respond to the invitation.¹⁶⁰ ***.¹⁶¹

¹⁵³ P. 27; R. 11

¹⁵⁴ II. at 671-72, 673-74, 675, 680, 682-83.

¹⁵⁵ II. at 676.

¹⁵⁶ R. 38.

¹⁵⁷ II. at 448-49.

¹⁵⁸ II. at 413, 448.

¹⁵⁹ II. at 449-50.

¹⁶⁰ II. at 582-85, 586-87.

104. Riesel, Texas is a small community. The total student population of the school district is around 638. ***. The *** principal sees Student regularly at the ***.¹⁶² ***. He met with Student's mother on several occasions to discuss Student's education and collaborate with Student's parents in selecting a dyslexia program. The principal gave Student's mother his cell phone number and they communicated by email, text messages, and in face to face meetings.¹⁶³
105. Student's parents attended all ARD meetings often with the support and counsel of an advocate or an attorney.¹⁶⁴ Student's parents have access to "Parent Portal" – real time access to Student's grades through the school district's website.¹⁶⁵ The special education teacher communicated with Student's parents regarding how Student was doing in school.¹⁶⁶
106. Student made progress in Student's reading ability from the summer of 2016 through the summer of 2017. Student was able to read more complex words without help from the teacher most of the time. By the end of the summer of 2017, Student no longer struggled to read grade level passages. Student's *** by the end of the 2017 summer. Student's *** improved, although Student's ***.¹⁶⁷ Student made progress working through the DIP program.¹⁶⁸
107. Student's parents obtained an independent *** evaluation with a report issued on October ***, 2017. The independent *** evaluation was quite comprehensive, utilized a number of assessment instruments including rating scales, teacher reports, and a reading assessment. At the time of the independent *** evaluation Student was *** years old and in the *** grade. Many of the responses were consistent with Student's *** identified by the school district's *** assessments.
108. The independent *** evaluation made a detailed set of recommendations in the areas of ***. Many of the recommendations in the independent *** evaluation are addressed in Student's *** program implemented this school year.¹⁶⁹
109. For example, Student is *** consistent with the areas of strength identified by the

¹⁶¹ II. at 448-49, 584-85.

¹⁶² II at 425, 428.

¹⁶³ R. 10; R. 14; R. 18; II. at 428-29, 430.

¹⁶⁴ J. 1 at 21; J. 5 at 5; R. 4 at 14-15; R. 5 at 9; R. 8 at 53.

¹⁶⁵ II. at 453-54; P. 29.

¹⁶⁶ II. at 581-82.

¹⁶⁷ II. at 516-17.

¹⁶⁸ II. at 518-20; R. 21.

¹⁶⁹ P. 31; R.8 at 11, 18, 38-48, 53; R. 11 at 23, 28-29, 32, 35; II. at 399.

independent *** evaluation. Student has adequate motor skills to utilize ***, is a “hands on” learner, and enjoys ***.¹⁷⁰ As recommended by the independent *** evaluation, the school district offered Student the opportunity to ***.¹⁷¹ Student continues to receive instruction in the academic skills Student needs ***, dyslexia services, and *** additional math instruction.¹⁷²

VII. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. *20 U.S.C. § 1400(d)*. The school district has a duty to provide FAPE to all children with disabilities ages 3-21 who are enrolled in the school district. *34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a) (3)*.

The school district is responsible for providing Student with specially designed personalized instruction with sufficient support services to meet Student’s unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child’s IEP. *20 U.S.C. § 1401(9); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 188-189, 200-201, 203-204 (1982)*.

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.¹⁷³ *Schaffer v. Weast, 546 U.S. 49, 62 (2005); Teague Ind. Sch. Dist. v. Todd L., 999 F.2d 127, 131 (5th Cir. 1993)*. In this case the school district was obligated to provide Student with

¹⁷⁰ P. 31 at 10; II. at 398-99, 410.

¹⁷¹ P. 31 at 11; II. at 448-49.

¹⁷² P. 31 at 11; R. 8 at 48, 53; R. 11 at 23, 28-29.

¹⁷³ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z., 580 F. 3d 286, 292 n. 4 (5th Cir. 2009)*.

FAPE during the 2016-17 school year and offer a program that is reasonably calculated to provide Student with the requisite educational benefit for the current 2017-18 school year. The burden of proof in this case is on Petitioner to show the school district did not do so. *Id.*

C. ***

1. * Rules Under the IDEA**

***.

***.

2. State Law

Under state law, the ARD must consider, and where appropriate, address the following in the student’s IEP:

- ***;
- ***;
- ***;
- ***;
- ***;
- ***;
- ***;
- ***.

3. Preferences and Interests for ***

The evidence showed the school district properly began ***. The evidence also showed the ARD Committee reviewed the *** annually. The *** was updated noting Student’s ***.

It is reasonable to expect Student may continue to develop or ***. ***. ***. ***.

Although Student did not *** was discussed the law allows the school district to take other steps to ensure Student's *** are considered. The evidence showed the school district did so – by administering the student and parent *** and getting feedback from Student's teachers as to how Student was doing in Student's classes. ***.

Student was enrolled in *** in both the 2016-17 and 2017-18 school years consistent with Student's ***. Student was supported in the *** with accommodations to meet Student's reading, math, attentional, and behavioral needs. ***. The evidence showed the school district shared information with Student's parents during the relevant time period about ***.

***. ***.

4. ***

The school district ***. When the *** did not attend, the school district formulated a strategy for increasing the likelihood of the *** attendance by notifying *** ARD invitations. There is nothing in the state or federal law that allows the school district to compel attendance of ***.

5. Measureable Goals and Objectives

Petitioner complains the *** lacked objective and measureable *** goals. The evidence shows the goals were relatively clear: ***. Even if the *** goals lacked more detail in describing ***, the *** as a whole did not deny Student FAPE when viewed *** with Student's IEPs. The IDEA does not require the level of specificity Petitioner seeks in formulating an appropriate ***. ***.

The IEPs and the *** addressed Student's need to pass Student's *** by mastering the

grade level curriculum ***. The IEPs ***, addressed Student's need to further develop reading, writing, math, and *** and *** - whatever form that may take.

6. * Assessments**

Petitioner contends the school district failed to conduct appropriate and timely *** assessments or provide Student's parents with sufficient information about *** or PWN of its refusal to provide ***. The evidence showed the school district did conduct *** appropriate *** assessments ***. The school district provided Student's parents with sufficient information, ensured parental involvement in Student's *** by securing parental feedback ***, discussed Student's ***, and shared information *** at ARD meetings.

The IDEA does not define the term ***." The law does not preclude the use of *** as used for that purpose in this case. Indeed, other jurisdictions have specifically endorsed *** as appropriate assessments for ***. ***. Perhaps the school district could have conducted additional *** assessments such as those conducted in the *** evaluation completed in October 2017. The school district is under a duty to consider the results and recommendations of that evaluation at an ARD meeting. ***. The evidence showed the school district has not yet had that opportunity.

7. Prior Written Notice

The school district considered and responded to parental requests for additional IEP goals and objectives and agreed to lower the passing rate required for *** activities. The school district did not refuse to provide Student with ***; therefore, there was no requirement to provide Student's parents with PWN. Even if the school district had such a duty, the evidence showed the school district did provide Student's parents with appropriate PWN with regard to *** decisions.

8. ***

Petitioner complains the *** lacked a ***, including that Student was unable to ***. This argument is not supported by the evidence. First, ***, can be an appropriate component of a ***, ***. Second, appropriate services for *** also included: providing Student's parents with information about *** to ARD meetings, and providing Student's parents with a ***.

Third, the evidence showed Student is not precluded from ***. The evidence showed Student is not required to ***. In addition, Student ***. Although Student barely missed making a score on the *** STAAR *** that would have ***, it is reasonable to consider ***. Just because Student did not ***, does not mean Student is foreclosed from *** the school district can provide through ***.

Finally, the evidence showed Student is expected to *** – Student was expected to ***, does chores around the house, and kept up in classes with the support of appropriate accommodations that Student may continue to ***. Student's physician did not anticipate placing any restrictions on Student's ***. The *** class will also support Student's ***. Furthermore, Student's Behavior and Functional IEPs addressed Student's organizational needs. There was very little evidence that Student cannot function independently in terms of *** or needed more services in that regard.

9. Conclusion on ***

A school district meets its responsibilities for *** under the IDEA when: ***. ***. The evidence in this case shows these aspects of the *** at issue all occurred.

Furthermore, so long as the *** addressed ***, the *** meets IDEA requirements. Even if a student has some on-going difficulties, an appropriate *** does not mean the student will no longer ***. So long as the *** addresses the requisite components (***), it is appropriate within the meaning of the IDEA. ***.

D. FAPE

1. The Four Factors Test

In Texas, the Fifth Circuit has articulated a four factor test to determine whether a school district's program meets IDEA requirements. Those factors are:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and,
- Positive academic and non-academic benefits are demonstrated. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program for reimbursement purposes. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

2. Individualized on the Basis of Assessment and Performance

First, the evidence showed the IEPs implemented during the relevant time period were individualized on the basis of assessment and performance. IEP goals and objectives were developed to address Student's areas of need in ***, reading, math, and functional study and organizational skills as identified by both standardized assessments and informal measures within the relevant time period. The PLAAFPs used as the basis for formulating IEP goals and objectives were derived from those assessments as well as Student's grades, STAAR *** results, and teacher input. Although it does not appear the school district conducted an AT evaluation to determine Student's need and receptivity to AT devices (***) Student's IEPs nevertheless addressed Student's academic needs with appropriate instructional accommodations as support. The IEP goals and objectives at issue addressed Student's reading, writing, and math deficits as identified by a variety of assessment data collected and reviewed by the relevant ARD committees.

Petitioner criticized the PLAAFPS as failing to include baseline skill level data. The IDEA does not require PLAAFPS be formulated in a particular way – only that the IEP include “a statement” of the student’s PLAAFPS. Educators may differ about how PLAAFPS should be stated. However, such differences among educational professionals are not determinative as to whether the IEP goals and objectives are appropriate. *See, 34 C.F.R. §300.320 (a)(1).*

3. Least Restrictive Environment

Second, the evidence showed the IEP and placement implemented during the relevant time period met the IDEA’s preference for educating children with disabilities to the maximum extent appropriate with their non-disabled peers. *34 C.F.R. § 300.114.* Student received instruction in all *** required *** in the general education setting with the support of appropriate and effective accommodations. Student was also provided *** instruction in two areas of need: dyslexia and math. The evidence showed this combination of instructional settings – which were consistent throughout the relevant time period – met Student’s educational needs in the least restrictive environment. *Id.* Student did not need special education classes in order to receive the instruction Student needed to make progress and work towards the requirements stated in Student’s ***.

4. Services Provided in a Coordinated, Collaborative Manner by Key Stakeholders

Third, the evidence showed Student’s services were provided in a coordinated and collaborative manner by the school district. The record is replete with examples of the various ways the school district coordinated and collaborated with Student’s parents. The school district considered parental data and information and responded, researched, and implemented many parental ideas, suggestions and/or requests. Although some parental requests were not always adopted by the school district, no one member of an ARD Committee has veto power over the educational decision-making that is the ARD Committee’s overall responsibility. *34 C.F.R. §§ 300.321-300.322.* Instead, the record shows the school district made consistent efforts to reach consensus with Student’s parents over the relevant time period. *19 Tex. Admin. Code*

§ 89.1050 (g).

The school district was required to ensure parental participation in the ARD process, but it was not obligated under the IDEA to implement every parental request or suggestion. *See, Lachman v. Illinois St. Bd. of Educ.*, 952 F. 2d 290, 297 (7th Cir. 988). However, many parental suggestions and requests were agreed to such as: modifying the passing rate for ***, selecting a new dyslexia program for this school year, adding math goals and *** math instruction, and hiring a certified reading teacher to provide Student's dyslexia services this year so Student ***.

The special education teacher, as Student's case manager, collaborated with Student's teachers in monitoring Student's progress and sharing that information with Student's parents and in ARD meetings. Although the amount of special education consult services seems somewhat arbitrary, Petitioner did not prove it was insufficient for the limited purpose of monitoring Student's performance in Student's ***.

The educational diagnostician communicated with Student's mother to ensure the IEE results were added to the May 2017 REED and that corrections to ARD documents were provided. The *** principal met with Student's parents a number of times and continued to offer to meet or convene ARD meetings to address parental concerns.

The dyslexia specialists conferred and collaborated together in delivering the dyslexia services – when implementation of the DIP by both teachers became cumbersome they worked together to resolve the problem. The DIP was implemented in the dyslexia class, and the compensatory services reinforced DIP concepts and worked on decoding and reading comprehension through the use of age appropriate and grade level materials.

There was some evidence the classroom teachers were not fully informed as to which version of the IEP was in place at the beginning of the current school year. There could have been greater collaboration between school district staff in that regard. It is, however, understandable that some confusion arose since the parties reached agreements over the course of several months on various aspects of Student's educational program, but other issues were left

unresolved when attempts to reach consensus were not successful.

***. ***. Even though Student's parents declined that invitation, those opportunities remain available to Student through the school district's ***.

5. Academic and Non-Academic Benefits

Fourth, the evidence supports the conclusion Student received both academic and non-academic benefits from the educational program at issue. The IDEA does not require the IEP to guarantee a certain level of accomplishment – only that the IEP is reasonably calculated to meet Student's needs given Student's unique circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017). Furthermore, the school district is not required to provide Student with the best possible education. Student does not need to improve in every academic and non-academic area to receive an educational benefit. The issue is not whether the school district could have done more. Instead, the inquiry is whether Student received an educational benefit. *Houston Ind. Sch. Dist. v. V.P.*, 582 F. 2d 576, 590 (5th Cir. 2009). The evidence showed Student received more than a *de minimus* educational benefit from the program provided given Student's unique circumstances. *Andrew F. v. Douglas Cnty. Sch. Dist.*, *supra*; *Rowley*, *supra*.

Student passed ***. Student passed all the STAAR *** exams Student ***. Student continued to participate in favorite extracurricular activities, had friends at school, and behaved appropriately. Student needed certain accommodations to support academic and behavioral progress, and the evidence showed those accommodations were often effective. The evidence showed Student's reading and writing skills improved although Student certainly continues to exhibit some deficits. Student seems to be doing well in Student's *** class and the *** math class addresses the *** Student continues to need to work on.

6. Procedural Issues

Petitioner did not meet Student's burden of proving the school district violated student or parental procedural rights under the IDEA. The school district provided Student's parents with the

requisite PWN, notice of ARD meetings, consent for evaluations notices, and ARD documents. 34 C.F.R. § 300.503 (a) (c). The record supports the conclusion the school district met its responsibilities under these procedural safeguards.

Furthermore, even if there were any procedural violations, Petitioner did not prove those violations, if any, impeded Student's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. §300.513 (a) (2).

VIII. CONCLUSIONS OF LAW

1. Respondent provided Petitioner with a free, appropriate public education and devised an appropriate IEP for the 2016-17 school year that provided the requisite educational benefit. Petitioner did not meet Student's burden of proof on this issue. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017); *Schaffer ex. rel. v. Weast*, 546 U.S. 49, 52 (2005); *C.G. v. Waller Ind. Sch. Dist.*, 2017 U.S. App. LEXIS 11139* (5th Cir. 2017); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245 (5th Cir. 1997); 34 C.F.R. §§ 300.22, 300.323 (a); 19 Tex. Admin. Code § 89.1055 (e).
2. Respondent proposed and implemented a free, appropriate public education and devised an appropriate IEP for the 2017-18 school year that was reasonably calculated to provide the requisite educational benefit. The educational program, implemented while this case was pending, provided Student with the requisite educational benefit. Petitioner did not meet Student's burden of proof on this issue. *Id.*
3. Respondent conducted timely and appropriate *** assessments and devised and implemented an appropriate *** for the 2016-17 and 2017-18 school years. Petitioner did not meet Student's burden of proof on this issue. ***.
4. Respondent complied with student and parental procedural rights under the IDEA. Any procedural violations, if any, did not impede Petitioner's right to a free, appropriate public education, significantly impede the parent's opportunity to participate in decision-making regarding the provision of a free, appropriate public education, or cause a deprivation of educational benefit. 34 C.F.R. §§ 300.503 (a) (c); 300.504(a) (d); 300.513 (a) (2).
5. Any of Petitioner's claims arising under any laws other than the Individuals with Disabilities Education Act are outside the jurisdiction of a special education hearing officer in Texas. 34 C.F.R. §§ 300.503 (a); 300.507; 19 Tex. Admin. Code § 89.1151 (a).

6. Petitioner's request for an award of attorneys' fees and litigation costs, including expert witness costs, are outside the jurisdiction of a special education hearing officer in Texas. *34 C.F.R. §§ 300.516, 300.517; 19 Tex. Admin. Code § 89.1185 (n).*
7. Respondent's June 2016 FIE was appropriate under the IDEA and, therefore, Petitioner is not entitled to reimbursement for the cost of the independent educational evaluation secured at parental expense. *34 C.F.R. § 300.502(b) (3).*

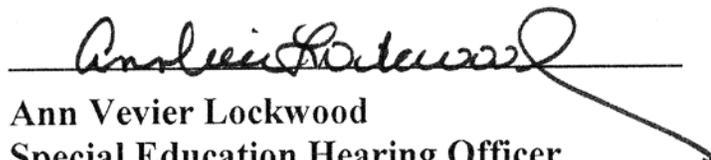
IX. ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Petitioner's requests for relief are hereby **DENIED**.

It is further **ORDERED** that Petitioner's claims arising under any law other than the Individuals with Disabilities Education Act are dismissed as outside the jurisdiction of the hearing officer including Petitioner's requests for attorneys' fees, expert witness costs, and other litigation costs.

All other relief not specifically stated herein is **DENIED**.

SIGNED February 2, 2018.


Ann Vevier Lockwood
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions 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. *19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a) (b).*