

STUDENT	§	BEFORE A SPECIAL
BNF PARENT & PARENT	§	EDUCATION
Petitioner	§	
v.	§	HEARING OFFICER FOR THE
	§	
LUBBOCK-COOPER INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

DECISION OF 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 (LCISD) is the Respondent to the complaint.

PROCEDURAL HISTORY

Petitioner filed the complaint with the Texas Education Agency (TEA) on March 16, 2017. The First Scheduling Order was issued on March 17, 2017, setting this case for a hearing on April 21, 2017. The initial pre-hearing conference in this matter was convened on April 4, 2017, at which time it was determined two days would be required for hearing. The case was reset for hearing on May 30 and 31, 2017. On April 25, 2017, another prehearing conference was held. The due process hearing was rescheduled for June 27, 28 and 29, 2017. On June 20, 2017, the hearing setting was adjusted to June 28, 29 and 30, 2017.

The hearing convened on June 28, 29 and 30, 2017, in Lubbock, Texas. Sonja Kerr and Idris Motiwala represented Petitioner. Abraham Barker, Holly Wardell and Amy Foster represented Respondent.

ISSUES AND PROPOSED RELIEF

Issues

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

The issues for hearing are as follows: (1) Whether Respondent failed to provide Student with a free appropriate public education (FAPE) within the meaning of the IDEA during the 2016-2017 school year and ongoing; and (2) Whether during the 2016-

2017 school year and ongoing, Respondent failed to comply with all procedural requirements of the IDEA and 19 Texas Administrative Code, Chapter 89, including failing to provide Parents with prior written notice (PWN), resulting in a denial of a FAPE for Student.

Proposed Remedies

During the May 3, 2017 pre-hearing conference, Petitioner requested the hearing officer order the following relief:

1. An Order finding Respondent denied Student with a FAPE during the 2016-2017 school year, including summer of 2017.
2. An Order finding the August 2016 ARD/IEP denied Student a FAPE for the 2016-2017 school year.
3. An Order finding the October 2016 ARD/IEP denied and continues to deny Student a FAPE.
4. An Order finding the November 2016 ARD/IEP changes did not improve Student's receipt of a FAPE.
5. An Order directing Respondent to provide Student with compensatory education services, and allowing Parents to secure these privately at a reasonable market rate in the Lubbock area.
6. An Order directing Respondent to allow Student's private speech language pathologist (SLP) and occupational therapist (OT) to come on campus and provide services to Student, and to work with Respondent's staff to ensure Student's services are consistent between the school and home.
7. An Order finding Student is qualified for extended school year (ESY) services during summer 2017 focusing on reading, speech, and executive functioning deficits.
8. Any other relief as may be appropriate.

BURDEN OF PROOF

The IDEA creates a presumption the school district's decisions made pursuant to the IDEA are appropriate, and the party challenging the decisions bears the burden of proof.¹

¹ *Shaffer v. Weast*, 546 U.S. 49 (2005).

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

FINDINGS OF FACT

Based upon the evidence at hearing, 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. ***.⁴ ***.⁵
3. ***.⁶ ***, Student scored above age equivalency in cognition, adaptive, motor, communication and personal-social development.⁷
4. ***.⁸ As a result ***, Student has ***, attention deficit hyperactivity disorder (ADHD), ***, and ***.⁹

5. ***.¹⁰ ***.¹¹ ***.¹²
6. Dr. *** is a Licensed Psychologist and a Licensed Specialist in School Psychology (LSSP) who is an expert in ***.¹³ Dr. *** has presented on ***.¹⁴
7. Dr. *** testified *** can occur when there is ***.¹⁵ *** can impact all possible areas that affect learning. It is a very individual presentation.¹⁶

² 20 USCS §1415(i).

³ PE 23.

⁴ PE 9.

⁵ Tr. at 212.

⁶ PE 9 at 2.

⁷ PE 3 at 6.

⁸ PE 9.

⁹ PE 9 at 13.

¹⁰ PE 56.

¹¹ PE 56 at 3.

¹² PE 56 at 5.

¹³ PE 5; Tr. at 302-305.

¹⁴ PE 6.

¹⁵ Tr. at 313.

¹⁶ Tr. at 316.

8. Dr. *** explained a child with *** will have very unique child specific characteristics. Consequently, it is necessary to adjust the *** child's program more than a standard child. They often require more monitoring and more team discussion about how monitoring impacts the education plan. Meetings are needed more frequently than once a year.¹⁷ Data collection is important to try to identify whether an intervention strategy is a good match.¹⁸ Dr. *** explained if you spend a fair amount of time with an uninformed process with consistent failures with no adjustments, you are losing that developmental window of opportunity to impact things.¹⁹
9. ***.²⁰ ***.²¹

Student's Evaluation and Educational History Prior to LCISD

10. Prior to enrolling in LCISD, Student programmed at ***.²²
11. In March of 2013, Student ***. In May of 2013, Student was diagnosed with ***.²³ In September and October of 2014, Student's school in ***.²⁴ ***.²⁵
12. In January of 2015, *** completed an FIE of Student.²⁶
13. While programming at ***, Student was privately evaluated by Neuropsychologist Dr. *** in April of 2015. Dr. ***'s report notes Student was previously diagnosed with *** and *** issues by developmental specialist Dr. ***. Dr. ***'s report further notes Dr. ***, a neuropsychologist, had diagnosed Student with ADHD, ***. Dr. ***. After Student started *** grade, it was reported Student was having *** and ***.²⁷
14. Dr. *** determined Student demonstrated strengths, as well as notable weaknesses, which were significantly impacting Student's academic and general functioning. She noted the evaluation results reveal Student was functioning in the above average psychometric range of intelligence with regard to perceptual reasoning, but Student simultaneously demonstrated borderline impaired language skills that significantly interfered with Student's ability to demonstrate what Student knows and Student's ability

¹⁷ Tr. at 382-383.

¹⁸ Tr. at 382-383.

¹⁹ Tr. at 424.

²⁰ Tr. at 321-322.

²¹ Tr. at 329-330.

²² PE 28 at 3.

²³ PE 3 at 6.

²⁴ PE 3 at 7.

²⁵ Tr. at 328.

²⁶ RE 14.

²⁷ RE 15.

to understand others. She concluded Student presented with a language disorder.²⁸ Prior to ***, Student had typical language development, which precluded a diagnosis of Autistic Disorder.²⁹

15. ***. Having intact ***. Dr. *** concluded Student's *** and language disorder make it difficult for Student to appropriately meet school requirements or engage in successful social interactions with others in and out of school settings.³⁰
16. Dr. *** recommended that Student participate in intense and frequent speech therapy with a *** speech language pathologist (SLP) who is trained in *** (** days per week, *** minutes). She had numerous other recommendations such as placement in a class with a co-teacher, aide, or teacher's assistant to assist Student.³¹
17. After being referred by ***, M.D., Student was evaluated for speech and language needs by SLP *** on February ***, 2016. The evaluator utilized the Clinical Evaluation of Language Fundamentals-Fourth Edition (CELF-4). A language disorder and an attention and concentration deficit disorder were diagnosed.³² Ms. *** determined Student presented with a profound language disorder in all areas of language. Ms. *** also determined it was medically necessary that Student receive speech and language therapy ***.³³
18. Dr. *** privately evaluated Student in April of 2016 when Student was *** and completing *** grade in ***.³⁴ Dr. *** determined Student met criteria as a student with ***, and also had a combination of ADHD and ***. Student also presented with a pragmatic language impairment.³⁵
19. Dr. *** testified that Student has average intelligence compared to same-age peers. However, within each of the four separate domains of verbal comprehension, visual spatial skills, processing speed and working memory, Student demonstrated a fair amount of scatter. Dr. *** further testified Student scored in the below-average range in ***.³⁶
20. According to Dr. ***, Student ***, which makes Student harder to predict. She testified it is "****."³⁷ In Student's case, Student's *** was consistent with ***.³⁸ Student should

²⁸ PE 13 at 6.

²⁹ PE 13 at 7.

³⁰ PE 13 at 7.

³¹ PE 13 at 8-12.

³² PE 17.

³³ PE 17 at 5.

³⁴ PE 8; PE 9.

³⁵ PE 9 at 13.

³⁶ Tr. at 333-340.

³⁷ Tr. at 325-326.

³⁸ Tr. at 317-318.

not be viewed as a child who has a learning disability because Student's developmental trajectory is very different.³⁹

21. Dr. *** described Student's profile as like a piece of Swiss Cheese. Similar to other children with ***, some of Student's scores are fine. However, the more you explore you will find holes that are present, making it harder to predict what Student's skills will be. It puts adults working with Student at risk of making incorrect assumptions, which keeps providers from being able to make broad conclusions that you might be able to make for a child who has a more neurotypical profile. It is important from an instructional standpoint that you gather good data and make good clinical and consistent behavioral observations over time to be able to find the holes in Student's development. This will enable the instructor to address the identified deficits.⁴⁰
22. ***.⁴¹
23. Although it is difficult to know how much, it is possible for Student to improve Student's skills. Research suggests all children with ***. Many things can be done to support Student including providing speech and language services through a SLP.⁴²
24. Dr. *** testified there are special factors that consistently show up in repeat assessments of Student's skill set. Student consistently demonstrated 1) Speech and language impairment, both *** and ***; 2) Difficulties with aspects of ***; 3) Difficulty with ***; and 4) Difficulty with attention.⁴³
25. Dr. *** noted it is important for Student's teachers to know about Student's ***. Some children who have *** will have *** that is longstanding after ***. Absence seizures were observed by Dr. *** when she evaluated Student. Dr. *** noted there were several instances when Student had a very clear ***.⁴⁴
26. A student with *** is very different than a student who is ***. For a child who's *** one can see the child has ***. When Dr. *** observed Student ***.⁴⁵
27. Dr. *** explained *** keeps Student from being able to engage in information processing ***. Information should be provided to teachers to inform them of what to

³⁹ Tr. at 327-328

⁴⁰ Tr. at 346-347.

⁴¹ Tr. at 349-352.

⁴² Tr. at 352-359.

⁴³ Tr. 355-357.

⁴⁴ Tr. at 359-362.

⁴⁵ Tr. 363-365.

look for during times of ***. Instruction should be avoided during periods when Student ***. The goal should be to stop instructional strategies and then resume ***.⁴⁶

28. Dr. *** stressed that Student needs constant teacher monitoring when working independently. Student is not going to approach staff. Student is unable to self-correct even when Student is prompted. Student has a fairly limited understanding of what Student's own capabilities are. ***. Most children with *** do not have the clear ability to itemize their strengths and weaknesses the way a typically developing child can.⁴⁷ In addition, Student struggles with ***.⁴⁸
29. On ***, 2016 and ***, 2016, Dr. *** provided additional consult summaries.⁴⁹ Dr. ***'s recommendations regarding goals and objectives for Student's IEP are contained in her reports.⁵⁰ One of Dr. ***'s recommendations is Student should receive *** minutes of direct OT ** times in a *** period.⁵¹ Respondent's former Special Education Director (SPED) *** believed Dr. *** did a very thorough report and wanted to incorporate a lot of her recommendations into the IEP.⁵²
30. In the Spring of 2016, ***, Director of Speech Pathology and ***, worked with Student. Ms. *** has 39 years of speech pathology experience and 32 years of teaching experience at ***.⁵³
31. Ms. *** was aware Student had ***. She noted it is common for ***.⁵⁴ She observed Student and worked with Student. The sessions she had with Student were ***-minute sessions.⁵⁵
32. Ms. *** described Student as having a problem with ***. If Student was anxious or under a time limitation Student had difficulty **. ***.⁵⁶
33. Student had ***. Student had difficulty with 888. Student's *** at the *** level was good. When Ms. *** gave Student a *** and asked Student to *** Student could comply.⁵⁷ However, Student had difficulty with *** such as ***. Student often would ***.⁵⁸

⁴⁶ Tr. at 367-368.

⁴⁷ Tr. at 369-371.

⁴⁸ Tr. at 330.

⁴⁹ PE 7; PE 10.

⁵⁰ PE 9; PE 10.

⁵¹ PE 10 at 3.

⁵² Tr. at 584-585.

⁵³ Tr. at 253.

⁵⁴ Tr. at 260.

⁵⁵ Tr. at 263.

⁵⁶ Tr. at 254-255.

⁵⁷ Tr. at 260-261.

⁵⁸ Tr. at 261.

34. *** was a problem for Student the whole time Ms. *** observed Student. Student's expressive language did not match Student's receptive language. Student's expressive language was affected by requiring ***. Student had difficulty with ***. Ms. *** testified there was "no off the shelf program" for Student.⁵⁹ Given Student's combination of problems, which are mostly expressive language and ***, Ms. *** decided to focus on areas that might have the most impact in a relatively short intervention period. Therefore, they worked on ***, teaching Student some ***. She also taught Student strategies for *** and comprehension. Student's comprehension of certain very simple concepts was like ***. If a teacher said, "***," Student would hear, "***." ***.⁶⁰ They also worked on *** and used a strategy called *** to help Student ***.⁶¹
35. Instead of making the mistake of trying to simplify and give less information to Student, Ms. *** testified what Student needed was more information. Just because Student could read words did not mean Student knew what Student had read. Student needs ***.⁶² It was helpful to have ***, and then ***. She explained Student ***.⁶³
36. In May of 2016, Parent Mom and Ms. *** communicated by e-mail regarding Student going to LCISD. Parent sent Ms. *** Student's current IEP and neurological evaluations.⁶⁴
37. On July ***, 2016, Student was diagnosed with *** by Dr. ***.⁶⁵
38. On July ***, 2016, Parent Mom sent Ms. *** the most recent Full Individual Evaluation (FIE), Admission, Review and Dismissal (ARD) document, and neuropsychological evaluation for Student.⁶⁶ This email also included as an attachment, a review and critique of the *** ARD that had been completed by Dr. ***.⁶⁷
39. Parent Mom arranged a meeting with Ms. *** which took place on August ***, 2016. It was a cordial meeting, and Parent Mom brought pictures and a presentation.⁶⁸
40. Ms. *** was the LCISD SPED until January ***, 2017.⁶⁹

⁵⁹ Tr. at 255-256.

⁶⁰ Tr. at 256-258.

⁶¹ Tr. at 258-260.

⁶² Tr. at 261-262.

⁶³ Tr. at 262.

⁶⁴ PE 55 at 1-2; Tr. at 199-200.

⁶⁵ P E 21; Tr. at 206-207.

⁶⁶ PE 55 at 3; Tr. at 200-201.

⁶⁷ PE 10; PE 55 at 3.

⁶⁸ Tr. at 201-202.

⁶⁹ Tr. at 554.

Enrollment In LCISD 2016-2017 School Year

41. Student transferred to LCISD in August of 2016, from *** for the 2016-2017 school year. Student was registered in LCISD as a *** grade student at ***. At the time of Student's enrollment in LCISD, Student was eligible for special education.⁷⁰
42. On August ***, 2016, when she registered Student for school in LCISD, Parent Mom gave written consent for Respondent to conduct a FIE of Student.⁷¹ Ms. ***, an advocate hired by the parents, testified if a parent gives this type of consent, then an evaluation is to be conducted.⁷² Parent gave the consent to the guidance counselor and the ***.⁷³
43. Ms. *** testified even though Respondent had Parent sign a Consent form agreeing to a FIE, it was never Respondent's intent to conduct a FIE for Student. Rather it was a standard form put into transfer packets of students who are eligible for special education services so if Respondent needed more current data they could move forward.⁷⁴ Ms. *** agreed this practice could have been made clearer to Parents and was misleading.⁷⁵ Parents were not told the FIE was not going to be completed.⁷⁶ Ms. *** further testified if Parents had requested a FIE, Respondent would have completed it.⁷⁷ Respondent's current SPED *** indicated the FIE was not completed because it was not required.⁷⁸
44. On August ***, 2016, Parent Mom gave consent for Respondent to contact experts who had worked with Student, including, Dr. ***, Dr. ***, Dr. ***, Dr. ***, Dr. ***, and Dr. ***.⁷⁹ ***, ***, received the August *** consent from Parent Mom.⁸⁰ On the same day, *** began contacting Student's medical providers to gather information for Student's Individual Health Plan (IHP), which included measures to address Student's ** and other *** concerns.⁸¹ *** communicated with Parents to gather the needed information in order to create an IHP for Student.⁸² An IHP was developed for Student.⁸³
45. *** is a diagnostician for Respondent who was in charge of all ARD paperwork.⁸⁴ In August of 2016, she had Student's records from ***.⁸⁵

⁷⁰ RE 3; RE 4: Tr. at 96.

⁷¹ RE 3 at 006.

⁷² Tr. at 194.

⁷³ Tr. at 205-206

⁷⁴ PE 3 at 6; Tr. at 627-630.

⁷⁵ Tr. at 649-650.

⁷⁶ Tr. at 630.

⁷⁷ Tr. at 633.

⁷⁸ Tr. at 111.

⁷⁹ RE 32; PE 23.

⁸⁰ RE 31 at 829-845, 853-854.

⁸¹ RE 32.

⁸² RE 33 at 942-946, 949-951.

⁸³ RE 6 at 074.

⁸⁴ Tr. at 987-988.

46. Ms. *** became the SPED for Respondent in February of 2017. Ms. *** was aware when Student came to LCISD Student had already ***.⁸⁶ She did not know which IEP was in place at the start of the school year given she is not the one who keeps up with that paperwork.⁸⁷
47. Respondent's staff receives training regarding the care of students ***.⁸⁸ The ** provides student-specific training to relevant staff for students ***.⁸⁹ Ms. *** testified she and other LCISD staff attended a webinar training on *** in June of 2017.⁹⁰

Evaluation of Student during the 2016-2017 School Year

48. *** is an experienced SLP who has evaluated and worked with Student.⁹¹ Ms. *** started as a speech language pathologist assistant in 2009 and obtained her master's degree in 2010. She has worked with about 300 children since that time. *** presently works for ***.⁹² Ms. *** has worked with Student for almost a year.⁹³
49. Ms. *** evaluated Student on February ***, 2017, again using the CELF-4.⁹⁴ She was trained to administer the CELF-4 and had administered it prior to evaluating Student. She administered the evaluation consistent with the testing requirements.⁹⁵ Student demonstrated as follows:⁹⁶

Composite Area	Standard Score	Percentile Rank
Core Language Score	***	***
Receptive Language	***	***
Expressive Language	***	***
Language Content	***	***
Language Memory	***	***

50. Ms. *** compared the CELF-4 from 2015 to the 2016 administration. She explained Student's score decreased in core language. Student's score in receptive language

⁸⁵ Tr. at 991-994, 1034.
⁸⁶ Tr. at 96.
⁸⁷ Tr. at 114-115.
⁸⁸ Tr. at. 103.
⁸⁹ Tr. at. 948.
⁹⁰ Tr. at 100.
⁹¹ PE 16; PE 19.
⁹² PE 16; Tr. at 538.
⁹³ Tr. at 491-492.
⁹⁴ PE 19; Tr. at 494-499.
⁹⁵ Tr. at 495.
⁹⁶ PE 19 at 7-8.

decreased, as did language content, language structure and working memory. Student went down in five of the scores between 2015 and 2016.⁹⁷ She agrees with Dr. ***'s recommendation Student should participate in intense and frequent speech therapy with a pediatric SLP who is trained in ***.⁹⁸ Ms. *** compared the CELF-4 from the 2016 administration to her own administration of the CELF-4 in 2017.⁹⁹ Student's language scores again went down.¹⁰⁰

51. Ms. *** testified Student's language impairment is profound. She determined Student has a receptive and expressive language disorder.¹⁰¹ She explained Student has difficulty with ***.¹⁰² In expressive language, Student has difficulty ***. Student also has difficulty with ***, and ***.¹⁰³
52. Assistive technology (AT) can be aided or unaided. It can be a visual aid or it can be a speech generating device. Ms. *** would recommend *** for Student. There is an App Student can use called ***. Student can also use an App on Student's iPad called ***. It can be used as an *** for Student.¹⁰⁴ She recommended *** because it is intended to enhance Student's skills rather than ***, which is for a ***. She has seen Student use the App and it is effective for Student.¹⁰⁵
53. Ms. *** recommended a collaborative program that is robust and language intensive.¹⁰⁶ If Respondent provided services *** days a week, she could continue to provide Student services *** days a week. Student would then have *** days a week of services.¹⁰⁷
54. Ms. *** knew Student had difficulty ***. Student had difficulty ***. In a 1:1 therapy she could work with Student on these challenges.¹⁰⁸

August *, 2016 IEP**

55. Ms. *** testified as both a fact and expert witness in the creation of IEPs.¹⁰⁹ Ms. *** holds a Master in Special Education and had been a special education teacher and administrator for twenty years. She has been an advocacy consultant for four years. ***.

⁹⁷ Tr. at 496-500.

⁹⁸ PE 13 at 8; Tr. at 508-509.

⁹⁹ Tr. at 501.

¹⁰⁰ Tr. at 501-504.

¹⁰¹ Tr. at 494, 504.

¹⁰² Tr. at 493.

¹⁰³ Tr. at 494.

¹⁰⁴ Tr. at 505-506.

¹⁰⁵ Tr. at 506-508.

¹⁰⁶ Tr. at 509.

¹⁰⁷ Tr. at 510.

¹⁰⁸ Tr. at 516.

¹⁰⁹ Tr. 169-195.

She has experience and training in the IDEA and 19 Texas Administrative Code, Chapter 89. Her experience includes attending ARDC meetings and writing IEPs.¹¹⁰ She knows the family and attended ARDC meetings for Student.¹¹¹

56. Ms. Fitzhugh has experience as an “eSped” administrator for a school district. She testified eSped is an educational software program used to house records for students who receive special education services. Someone can pull up the program, enter the student’s information, including demographics, evaluations, goals, objectives, and present levels of performance. Staff can enter all the information necessary for the student to develop a full IEP.¹¹²
57. Ms. *** explained the creation of an IEP. Each goal should have specific components. Goals need to be observable, measurable, and contain a baseline. Goals need to be understood by those who are implementing and updating.¹¹³ A present level of performance is where the child is performing at that moment in time. Present levels of performance drive the IEP goals. In order to have a beginning component for an IEP goal, one would need to know the student’s present levels of performance.¹¹⁴ A baseline is where the child’s performance is at the time the goal was written.¹¹⁵
58. Ms. *** explained if a parent enrolls a student prior to the first day of school and has made the school aware the child has an IEP, then the IEP should be in effect on the first day of school.¹¹⁶ Ms. *** indicated if there is confusion about which IEP is in place, it could impact how staff would know to collect the data for progress on the IEP.¹¹⁷
59. On August ***, 2017, Educational Diagnostician *** *** forwarded a proposed draft IEP by email to Parents.¹¹⁸ However, this August *** draft IEP contains information entered by teacher *** on September ***, 2016.¹¹⁹ The August ***, 2016 draft IEP which Parents received is a 23-page document. It contains the word “draft”. This document notes Student is eligible for services as a student having a ***, OHI, and speech impairment.¹²⁰

¹¹⁰ Tr. at 169- 170.

¹¹¹ Tr. at 170-1712.

¹¹² Tr. at 171-172

¹¹³ Tr. at 185.

¹¹⁴ Tr. at 172

¹¹⁵ Tr. at 183.

¹¹⁶ Tr. at 176.

¹¹⁷ Tr. at 180.

¹¹⁸ PE 24.

¹¹⁹ PE 25.

¹²⁰ PE 25.

60. Ms. *** examined the draft August ***, 2016 IEP.¹²¹ Regarding the entry referencing the date of September ***, 2016, she said it is uncommon to see an IEP with an entry containing a date that is a month after the ARDC meeting date. She testified someone would have to go into the eSped system to enter the information referred to as 9/***/2016. Information can only be entered if the ARD document has been left open and not archived.¹²² When the document is locked, no further changes can be made to the document. When an ARD is concluded, all the signatures have been obtained, and there is no further discussion or entries to be made, the ARD is then typically locked in eSped.¹²³ Ms. *** opined if changes could continue to be made to Student's IEP throughout the 2016-2017 school year that would suggest it was never locked.¹²⁴
61. An IEP was created after the August ***, 2016 ARDC meeting.¹²⁵ This document contains a reference to a February ***, 2017 annual ARDC meeting. Ms. *** could not explain why this August document referenced February ***, 2017, and was not sure when it was completed.¹²⁶ During the 2016-2017 school year Ms. *** did not provide Parents an ARD document at any of the ARDC meetings as the meeting was ending.¹²⁷
62. After reviewing the August ***, 2016 IEP Ms. *** testified this IEP was lacking in baselines. She could not identify how the present level of performance for reading related to the reading goal.¹²⁸ She determined there was no baseline for the annual goal on study skills in either the goal or the present levels of academic achievement and functional performance (PLAAFPS). There was no baseline for the annual *** and ***. There was no baseline for the pragmatic language goal.¹²⁹ She also testified there was not enough information given to measure Student's progress on the goals in the August *** IEP.¹³⁰
63. The August *** IEP is a 27- page document.¹³¹ SPED *** testified she could not explain how this document, identified as the August ***, 2016 IEP, could include information from a LCISD SLP dated February ***, 2017.¹³² SPED *** did not know if the August IEP went into place in August of 2016.¹³³ She testified it was not her job to teach staff at LCISD how to write IEPs.¹³⁴

¹²¹ PE 25.

¹²² Tr. at 178.

¹²³ Tr. at 178-179.

¹²⁴ Tr. at 179.

¹²⁵ RE 4.

¹²⁶ RE 4 at 13; Tr. at 998-999.

¹²⁷ Tr. at 1035.

¹²⁸ Tr. at 183.

¹²⁹ Tr. at 183-185

¹³⁰ Tr. at 186-187.

¹³¹ RE 4.

¹³² RE 4 at 13; Tr. at 117-118.

¹³³ Tr. at 113.

¹³⁴ Tr. at 116.

64. Although there was a computerized version on the wall, Parent Mom testified at the August ARDC meeting no one had a paper copy of any IEP. Parent left without any paper copy of an IEP. She found it very difficult to know what was going on. ***.¹³⁵
65. Ms. *** believed the August *** IEP was in place at the start of the school year.¹³⁶
66. On September ***, 2016, Respondent forwarded a PWN to Parents, which indicated Respondent had documentation regarding Student's private service providers.¹³⁷

October *, 2016 ARDC Meeting**

67. An ARD meeting was held on October ***, 2016.¹³⁸ Student's private occupational therapist (OT) *** and Ms. *** attended the meeting along with Parents and school staff. Dr. *** also attended the meeting for Petitioner.¹³⁹ Dr. *** routinely attends ARDC meetings.¹⁴⁰ She has worked with IEP teams to develop measurable annual goals.¹⁴¹
68. The October ***, 2016 IEP notes Student qualified for special education services as a student having a ***, OHI and ***. Petitioner's version does not contain a health plan or PWN.¹⁴² Respondent's version of the October ***, 2016 IEP includes a PWN and a one-page IHP.¹⁴³ The IEP notes that ESY services were not recommended.¹⁴⁴ The IEP states annual review is the reason for the meeting.¹⁴⁵
69. Parent Mom testified members at the October ARDC meeting did not have a paper copy of any IEP. She left without a paper copy. She believed not having a copy made things harder for her because Dr. *** was there, and Dr. *** talks above Parent's comprehension.¹⁴⁶
70. Dr. *** testified about her recollections of the October ***, 2016 ARDC meeting.¹⁴⁷ Before the meeting, she had no prior conversations with Respondent. Whenever she provides a report to a parent, she requires the parent to share it with the school.¹⁴⁸ At the meeting, Dr. *** did not know the ARDC members' skills with ***.¹⁴⁹

¹³⁵ Tr. at 271- 272.

¹³⁶ Tr. at 670.

¹³⁷ PE 27.

¹³⁸ RE6.

¹³⁹ RE 6 at 072.

¹⁴⁰ Tr. at 304.

¹⁴¹ Tr. at 403.

¹⁴² PE 28.

¹⁴³ RE 6.

¹⁴⁴ RE 6 at 63.

¹⁴⁵ RE 6.

¹⁴⁶ Tr. 273-274.

¹⁴⁷ Tr. at 371-374.

¹⁴⁸ Tr. at 371-372.

¹⁴⁹ Tr. at 374-375.

71. According to Dr. ***, ***, Dr. *** informed the ARDC team working with children that have a history of *** is different than working with some of the ***. Unlike children with ***, children with ADHD or a learning disability will have a predictable trajectory. They respond to interventions with a steady state of improvement over time.¹⁵⁰ Children with *** can thrive in some areas with certain types of instruction, falter in others, and need a lot more observation and data gathering. They also need experiential staff members who are more experienced in being able to watch for peaks and valleys, and watch for ***. Dr. *** has worked with other ARDC teams.¹⁵¹
72. The lack of any paper version of the ARD/IEP at the October ***, 2016 meeting was corroborated by Dr. ***. There was no paper copy given to Parents at the end of the meeting.¹⁵² She noted typically, when completing an IEP meeting the ARDC comes to agreement or disagreement, and there is a clear discussion of the minutes from the meeting itself. A copy of the IEP is provided to the parent that day.¹⁵³ She testified the process is finalized the point the meeting is over.¹⁵⁴
73. The means of evaluating Student was addressed by Dr. ***. ***. She testified from an evaluation standpoint, when you complete academic testing, ***,¹⁵⁵ ***. Student's rate of learning this year would be different than Student's rate of learning next year in a new curriculum. While you might see growth, it would flatten out as you get closer to the middle of the year. The degree of growth would narrow because of higher material.¹⁵⁶ She recommended caution in interpreting the numbers generated during *** because they may not be truly reflective of Student's learning potential.¹⁵⁷
74. Dr. *** reviewed some of Student's IEPs. Dr. *** explained the goals in the August IEP were not properly drafted for Student. Several of the goals did not contain objectives.¹⁵⁸ Each child makes gains academically, developmentally, socially and linguistically in their own way. This is why it is so important to be able to accurately observe scatter data, and collect data so staff knows which portions Student is breezing through and which portions Student's stalling out on.¹⁵⁹

¹⁵⁰ Tr. at 375-377.

¹⁵¹ Tr. at 377-378.

¹⁵² Tr. at 386.

¹⁵³ Tr. at 387-388.

¹⁵⁴ Tr. at 388.

¹⁵⁵ Tr. at 388-389.

¹⁵⁶ Tr. at 458-459.

¹⁵⁷ Tr. at 393-394.

¹⁵⁸ Tr. at 400-401.

¹⁵⁹ Tr. at 404.

75. Dr. *** also addressed the October IEP. The IEP contained the following objective: ***. Dr. *** explained she did not know what the phrase “****” meant.¹⁶⁰
76. With respect to the modifications and accommodations listed in the October IEP, Dr. *** testified they were difficult to interpret. In her opinion, the IEP contained canned accommodations.¹⁶¹ Some are similar to her recommendations but many are broader and lack the specificity that is needed.¹⁶² She recommended breaks for Student ***.¹⁶³
77. Dr. *** recommended Student have consistent, effective staff members that are able to observe and gather data. Additionally, there is a need for someone to be with Student consistently. There is a need for a case manager who communicates among all team members including private service providers to have a real multidisciplinary team approach.¹⁶⁴
78. Dr. *** explained Student has ***. Every *** is going to impact Student’s ***, and could have some impact on Student’s *** as Student moves forward. It is imperative to be ***. *** should be tracked.¹⁶⁵
79. Dr. *** would not recommend obtaining a consent for a FIE from a parent and then not completing the evaluation. The purpose of the written request is to culminate in the process of a new FIE that should have a new date and updated information.¹⁶⁶
80. Dr. *** believes Respondent should measure Student’s academic performance utilizing goals and objectives, and measure Student’s academic performance using individualized tests such as the Woodcock-Johnson.¹⁶⁷
81. On October ***, 2016, Ms. *** sent what she believed was the final version of the ARD/IEP of October ***, 2016 to Parents by email.¹⁶⁸
82. During her testimony Ms. *** at first believed the Special Education Department did not have consent to talk with Dr. *** until October ***, 2016.¹⁶⁹ However, on August *** Parent Mom signed a consent form authorizing the release of Student’s records to Ms.

¹⁶⁰ Tr. at 403.

¹⁶¹ Tr. at 436-439.

¹⁶² Tr. at 438.

¹⁶³ Tr. at 434.

¹⁶⁴ Tr. at 405-408.

¹⁶⁵ Tr. at 464-465.

¹⁶⁶ Tr. at 473.

¹⁶⁷ Tr. at 465-467.

¹⁶⁸ RE 33 at 957; Tr. at 1020.

¹⁶⁹ Tr. at 586-587.

***, *** and Ms. ***.¹⁷⁰ Ms. *** later recalled Respondent also had a blank consent form signed by Parent Mom dated August ***, 2016.¹⁷¹

November *, 2016 ARDC Meeting**

83. On November ***, 2016, the ARDC reconvened. Both parties recorded the meeting. It is Respondent's policy to record ARDC meetings.¹⁷² At the end of the November ***, 2016 meeting, Parents did not sign in agreement because they did not have a copy of the document. School staff signed the November ***, 2016 ARD/IEP using electronic signatures.¹⁷³ Parent Mom again left without any paper copy of the ARD document. The meeting was "really hard" for Parent Mom because Parents had asked for the meeting due to concerns that Respondent was not doing what was discussed in October.¹⁷⁴
84. On December ***, 2016, Parents sent their own written statement and addendums to Respondent explaining their disagreement and concerns regarding Student's ARD paperwork.¹⁷⁵ Parents wrote this because they believed the deliberations were written as though somebody could have a completely different understanding of what was discussed or agreed upon. After Parents returned from the November meeting they felt they were not being heard. Therefore, Parent Mom went through the deliberations and documented everything coming from the audio tape.¹⁷⁶ In addition to sending this document to Respondent, it was also presented at the January ***, 2017 ARDC meeting.¹⁷⁷
85. On December ***, 2016, Parent Mom e-mailed SPED *** a request for an ARDC meeting due to Parents disagreement with the decisions of the ARDC.¹⁷⁸ Parent also sent an e-mail to Ms. *** reminding her to send the ARDC paperwork, and reminding her the 10 day reconvene was past due. Parent noted despite repeated requests, she had not received Student's ARD document.¹⁷⁹ On December *** Ms. *** responded "I have added a screen shot of the section regarding ARD Committee Decision from the Parent's Guide to Admission, Review, and Dismissal Process, April 2016. In order to recess an ARD, as outlined in the first paragraph, a decision concerning the required elements of the IEP must be made by mutual agreement of the members if possible. The committee did not come to a disagreement based upon discussion that took place regarding the clarification of ***. We did not recess the ARD held on 11/***/16. Per the recording, you

¹⁷⁰ PE 23.

¹⁷¹ RE 3 at 7; Tr. at 622-623.

¹⁷² PE 55 at 46.

¹⁷³ RE 7 at 081

¹⁷⁴ Tr. at 274.

¹⁷⁵ PE 32.

¹⁷⁶ PE 32; Tr. at 208.

¹⁷⁷ Tr. at 207-200.

¹⁷⁸ PE 55 at 59.

¹⁷⁹ PE 55 at 60.

and *** both stated that you were signing in disagreement due to not having a copy of the PWN before leaving. I hope this helps clarify for you.”¹⁸⁰

86. SPED *** wrote Parent Mom on December ***, 2016 refusing to reconvene the ARDC meeting. Ms. *** noted the team had met for three hours on November ***, 2016. Ms. *** reminded Parent that the ARDC had held three ARDC meetings in the *** months her child had been enrolled in LCISD, with each meeting lasting two to three hours. Ms. *** reminded Parent during those meetings Parent had the undivided attention of several LCISD professionals, and LCISD administrators had met with her outside of ARDC meetings on at least six occasions totaling no less than eight hours.¹⁸¹
87. Ms. *** testified ARDC meetings typically last one hour. She can think of a few that went a little longer. It is rare for an ARDC meeting to last two hours. Student’s ARDC meetings lasted at least two hours each. The vast majority of students have one ARD a year. Student had four while programming in LCISD.¹⁸²
88. In Ms. ***’s experience, it is not common to leave an ARDC meeting with any paperwork. She encourages the diagnosticians to archive the ARD within five days. She believes it would nice for Parents to receive the final printed document within two to three weeks.¹⁸³
89. Ms. *** did not know if there was an archived IEP for Student in the eSped system.¹⁸⁴ She indicated she did not verify which IEP was in place for Student because she hires competent professionals to do that. Ms. *** had *** other students who required just as much time and energy as Student. She felt some resentment about the situation.¹⁸⁵ She believed Parent Mom made it very difficult for staff to do their jobs at times.¹⁸⁶
90. Throughout the school year, Parents requested Respondent provide them with copies of Student’s education records.¹⁸⁷ Parent Mom testified she had to file a Public Information Request to obtain some of Student’s records.¹⁸⁸

January *, 2017 ARDC Meeting**

91. Another ARDC meeting was held on January ***, 2017. Parents version of the related ARD document is 10 pages long. Parents wanted to present new *** information from

¹⁸⁰ PE 55 at 60.

¹⁸¹ RE 30; Tr. at 620-621.

¹⁸² Tr. at 596-599.

¹⁸³ Tr. 651-652.

¹⁸⁴ Tr. at 612-616.

¹⁸⁵ Tr. at 616.

¹⁸⁶ Tr. at 842-643.

¹⁸⁷ PE 55 at 15, 33 35, 41, 42, 44, 60, 71-72.

¹⁸⁸ Tr. at 217.

Student's ***.¹⁸⁹ Respondent's attorney was present at the meeting as was Ms. ***. According to Ms. ***, the ARDC did not address why consent for a FIE had been provided but the evaluation had not been completed.¹⁹⁰

92. Respondent's version of the January ***, 2017 ARD document is 13 pages.¹⁹¹ Ms. *** testified she sent this ARD to Parents on February ***, 2017.¹⁹²
93. During the January ***, 2017 ARDC meeting, Ms. *** told Parent Mom Student was reading at *** -grade level, but did not refer to beginning, or middle or end of *** grade.¹⁹³
94. According to Ms. ***, Student met Student's goals in January of 2017. The ARDC was thinking of new goals, but the January ***, 2017 ARD did not go into effect.¹⁹⁴
95. When she was reviewing the IEP progress reports provided in December of 2016, Ms. *** noted the reports indicated Student had mastered Student's IEP goals in the areas of reading and math. When she went to the January *** ARD meeting, she asked what data was used to show how Student had mastered the goals and objectives. The response was Student was working at ***-grade level with accommodations. Ms. *** did not believe that response made clear to her what data was used to determine how mastery was achieved. If a student has mastered their IEP goals and objectives, then it is time to move on, and look at new goals and objectives.¹⁹⁵ At the January *** meeting, Ms. *** did not see any one provide data to show Student had made progress.¹⁹⁶
96. Parent Mom testified at the January ARDC meeting members of the IEP team did not have a paper copy of any IEP, and once again she left without any paper copy of an IEP. This impacted her ability to participate in the development of the January version of the IEP. Parent had unanswered questions pertaining to the session notes and service logs. During the IEP meetings, when goals were discussed they were not written down in a reliable fashion.¹⁹⁷ Ms. *** also testified at the January ***, 2017 ARDC meeting there was no hard copy of an IEP that anyone was looking at during the meeting. Nor was an IEP projected on the wall.¹⁹⁸

¹⁸⁹ PE 33.

¹⁹⁰ Tr. at 194.

¹⁹¹ RE 8.

¹⁹² Tr. at 1023; RE 8 at 108.

¹⁹³ Tr. at 705.

¹⁹⁴ Tr. at 1038.

¹⁹⁵ Tr. at 186-188.

¹⁹⁶ Tr. at 188.

¹⁹⁷ Tr. 276-277.

¹⁹⁸ Tr. at 188.

97. SPED *** attended the January *** ARDC meeting. She testified she did not know which IEP they worked off of.¹⁹⁹ She was unable to locate present levels of performance for several goals identified in the January *** ARD document.²⁰⁰ She was unsure if the January *** ARD document went into effect. She was also unsure what ARD was in place at the end of the school year.²⁰¹
98. On February ***, 2017, Parents formally disagreed with the decisions of the ARDC meeting conducted on January ***, 2017.²⁰²
99. On February ***, 2017, SPED *** responded to emails from Parents to Respondent concerning development and implementation of the IEP for Student. She asked Parents to sign the January ***, 2017 signature page to show their disagreement and invited them to attend a 10-day reconvene on March ***, 2017. She also stated Respondent could do an AT assessment for Student if Parents gave consent.²⁰³
100. Respondent noticed an ARDC meeting for March ***, 2017.²⁰⁴ The meeting was rescheduled to March ***, 2017.²⁰⁵ Parents planned to attend.²⁰⁶
101. In April Parents received a PWN reflecting the January ***, 2017 ARDC meeting.²⁰⁷

March 2017 IEP

102. On March 16, 2017, Parents filed for due process.²⁰⁸
103. An ARDC meeting was convened on March ***, 2017.²⁰⁹ Parents did not attend the March ***, 2017 ARDC meeting because by then they had filed for due process and believed they were in the mediation process.²¹⁰
104. A March ***, 2017 ARD document was created.²¹¹ The document includes numerous goals. The duration period for some of the goals was March ***, 2017 to March ***, 2018. This document does not have the word DRAFT on it. The IEP does not provide for

¹⁹⁹ Tr. at 125.

²⁰⁰ Tr. at 140-142.

²⁰¹ Tr. at 144-145.

²⁰² PE 34 at 1.

²⁰³ PE 34.

²⁰⁴ PE 36.

²⁰⁵ PE 37.

²⁰⁶ PE 37 at 3; RE 12.

²⁰⁷ PE 38; Tr. at 211. (The PWN also refers to a January ***, 2017 ARD meeting. There is no evidence in the record indicating a January *** meeting occurred.)

²⁰⁸ PE 1.

²⁰⁹ PE 33 at 2.

²¹⁰ Tr. at 212-213.

²¹¹ RE 13.

ESY services. The March *** ARD document contains a Notice of Full and Individual Evaluation.²¹²

105. SPED *** was aware Student was classified as ***.²¹³ She does not believe Respondent has anyone on staff with expertise in ***.²¹⁴ She was also aware Student has been identified as ***.²¹⁵ Ms. *** testified she is unsure what IDEA classification Student is under for purposes of the ***.²¹⁶ She also knew Student was classified as having a speech impairment.²¹⁷ SPED *** agreed a *** can affect ***.²¹⁸
106. Student's *** Report dated April ***, 2017 does not show progress.²¹⁹
107. On May ***, 2017 SPED *** emailed Parents informing them there was no ARDC meeting on March ***, 2017. The e-mail explained ARDC members gathered for the ARDC meeting. However, when Parents did not come, Respondent held a staffing instead. SPED *** further explained the proposed IEP that was a result of the staffing was sent to Parents by regular and certified mail on April ***, 2017. Ms. *** attached a copy of the proposed IEP to this communication.²²⁰
108. Ms. *** testified about policies and practices of Respondent when she was the SPED. It was not the practice of Respondent when Ms. *** was director of special education to provide the parents a hard copy of the ARD at the end of the ARD meeting because it is not required.²²¹
110. Parent Dad did not know what IEP was in place for Student during the 2016-2017 school year until Ms. *** testified at the hearing.²²²

Regression

111. Student was *** years old when Ms. *** testified and she opined Student's language skills should be that of a *** grader and Student should be reading to learn. She estimated Student's current language skills as equivalent to ***.²²³ She concluded Student's language impairment is profound.²²⁴

²¹² RE 13 at 136.

²¹³ Tr. at 99.

²¹⁴ Tr. 108.

²¹⁵ Tr. 103.

²¹⁶ Tr. at 103.

²¹⁷ Tr. 104.

²¹⁸ Tr. at 106-108.

²¹⁹ PE 53.

²²⁰ PE 39.

²²¹ Tr. at 608.

²²² Tr. at 1054.

²²³ Tr. at 491-505.

²²⁴ Tr. at 493, 504.

112. Ms. *** compared the CELF-4 from 2015 to the 2016 administration. Five of Student scores decreased between 2015 and 2016.²²⁵ She also compared the CELF-4 from the 2016 administration to her own administration of the CELF-4 in 2017. Student's scores again went down.²²⁶

Services Provided by Respondent

113. Respondent kept service logs for Inclusion services and Personal Care services. Inclusion specialist *** provided the services and created the service logs. They are simply a daily report of activities and do not contain objectives or percentages of progress.²²⁷ Parent Mom asked the ARDC what Personal Care services were. Parent was told it was a misdocumentation.²²⁸

114. Parent Mom made numerous notes on these service logs wherein on some dates when Ms. *** recorded activities, Parent noted Student was receiving services elsewhere or on ***. Parent noted numerous discrepancies in these service logs including the following (Parent's notes are *italicized*):²²⁹

115. Respondent maintained service logs documenting the services provided by Ms. *** for Inclusion/Resource. Parent Mom made several notations regarding discrepancies. One of the notes concerned services that were provided on November ***, 2016. Parent indicated Student could not have received services that day because Student was *** and not at school that day.²³⁰

²²⁵ Tr. at 499-500.
²²⁶ Tr. at 501-504
²²⁷ PE 40; Tr. at 216-217.
²²⁸ Tr. at 221
²²⁹ PE 40.
²³⁰ PE 41; Tr. at 219, 1037.

116. Respondent's service logs for OT reflect services on December ***, 2016 from *** – ***.²³¹ Parent Mom disputed services could have been provided on December ***, 2016 because Student was ***. When Parent Mom asked about this discrepancy, the ARDC members never answered.²³²
117. Parent Mom testified Student's *** are very hard to identify. She received a call from the *** that a teacher had noticed ***. The teacher followed Student and noticed Student was ***. This is significant because Student ***.²³³ She took steps to have school staff attempt to keep track of Student's ***. There was no confirmation about whether the staff would monitor Student's ***.²³⁴
118. After filing the due process hearing request, Parent Mom received an email from Ms. *** telling her she could no longer text her. When Parent Mom dropped off Student, Ms. *** told her she was sorry for the email she was about to send and said it was written for her. Prior to this, Parent Mom had an excellent relationship with Ms. ***.²³⁵
119. Parent Dad did not know at any of the ARDC meetings that Parents could ask for *** as a related service on the IEP. They received a letter from Dr. *** saying Student *** and that it was important to pay attention to Student's behaviors ***. The letter was sent to Respondent through counsel.²³⁶
120. *** is the Director of *** for Respondent. She had not observed or evaluated Student.²³⁷ She was unaware of a letter sent to Respondent asking the staff to document and track Student's ***.²³⁸
121. LCISD SLP *** provided Student *** minutes of speech and language therapy *** times over *** weeks. Some services were provided in a group setting.²³⁹ She did not believe Student needed additional speech and language services.²⁴⁰ She knew Student was getting 1:1 speech and language services from a private provider. In her opinion, Student was at a *** grade level.²⁴¹ Although she believed Student made progress,

²³¹ PE 44 at 11.

²³² Tr. at 221.

²³³ Tr. at 282-283.

²³⁴ Tr. at 282-286.

²³⁵ Tr. at 289.

²³⁶ Tr. at 1042-1049.

²³⁷ Tr. at 968-969.

²³⁸ Tr. at 978-979.

²³⁹ PE 43; Tr. at 865, 873.

²⁴⁰ Tr. at 864.

²⁴¹ Tr. at 870.

there was no way to know if any progress was from her services or those of the private provider.²⁴²

122. *** is an Occupational Therapist (OT). She testified she provided Student *** minutes of OT beginning in October for *** out of *** times per *** weeks. She was aware Student had private OT services. She could not tell if any progress she thought Student made was a result of her work, the work of the private provider, or a combination. Although the August IEP states Student was supposed to receive one to one OT services, some of the OT services were provided in a group setting.²⁴³
123. Ms. *** could not recall if Student had an archived or final IEP during the 2016-2017 school year. Once archived, changes should not be made because that is what you've already given to a parent. The professionals then use the archived IEP to implement the services and measure the progress on goals and objectives.²⁴⁴

Private Services

124. Student presently receives private services from an OT, ***, a SLP, and ***.²⁴⁵
125. Ms. *** is willing to provide services to Student in the school setting.²⁴⁶ She provides Student 1:1 sessions *** times a week.²⁴⁷ Parents pay for her services.²⁴⁸
126. Parent Mom testified she has considered private school for Student and has tried to find one. She has given notice to Respondent that she will be placing Student in private school.²⁴⁹ The Notice was sent on June ***, 2017, and included the following potential private schools and associated costs:²⁵⁰

School	Enrollment Fee	Tuition	Grade Fee	Transportation Fee	Total Yearly Tuition and Fees
***	***	***	***	***	***
***	***	***	***	***	***
***	***	***	***	***	***

²⁴² Tr. at 874-875.

²⁴³ Tr. at 921.

²⁴⁴ Tr. at 612-614.

²⁴⁵ Tr. at 290.

²⁴⁶ Tr. at 514- 515.

²⁴⁷ Tr. at 518.

²⁴⁸ Tr. at 513.

²⁴⁹ Tr. at 292; RE 33 at 1029-1031.

²⁵⁰ RE 33 at 1029-1030.

127. Parent believes Student will need additional speech, OT, and *** services while attending a private school.²⁵¹ Parents would have to seek these additional private services to be provided at whichever school Student attends. These costs were also outlined in the June *** letter to Respondent as follows:²⁵²

Certified Inclusion Teacher	***	***
SLP pull in *** days a week	***	***
OT *** days a week	***	***
Dr. *** initial consultation	***	***
Dr. ***	***	***
*** Training	***	***
Assistive Technology Evaluation	Unknown	***
Assistive Technology if Applicable	Unknown	***
	Additional Services Total:	***

128. Parent Dad agreed they were considering private school and had notified Respondent. However, he had received no response.²⁵³

129. Parent Mom would like Dr. ***, who is a *** specialist, to help determine a suitable education plan for Student.²⁵⁴ She would like Respondent to pay for Dr. ***'s involvement.²⁵⁵

DISCUSSION

The IDEA was enacted to ensure 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.²⁵⁶ A FAPE includes special education and related services provided at public expense, under public supervision and direction, and without charge.²⁵⁷

²⁵¹ RE 33 at 1029-1031; Tr. at 294.

²⁵² RE 33 at 1029-1031.

²⁵³ Tr. at 1056.

²⁵⁴ Tr. at 295-296.

²⁵⁵ Tr. at 299.

²⁵⁶ 20 U.S.C § 1400.

²⁵⁷ 34 C.F.R. § 300.17.

Upon finding a child has a disability, an ARDC meets to develop an individualized education program (IEP) for the child.²⁵⁸ The public agency must ensure the IEP Team for each child with a disability includes the parents of the child.²⁵⁹ Each public agency must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or afforded the opportunity to participate.²⁶⁰

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.²⁶¹ The U.S. Supreme Court has held that 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.²⁶²

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

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.²⁶³

This Hearing Officer does not believe Student's IEPs provided Student with a FAPE. Student's IEPs were not designed for Student's particular set of disabilities. Ms. *** testified the August IEP did not contain needed baselines. Dr. *** testified that several of the goals in the August IEP were not properly drafted for Student. With respect to the accommodations in the October IEP, Dr. *** believed many lacked needed specificity. Additionally, Respondent's witnesses asserted the January and March IEPs never went into effect even though Student had already met Student's IEP goals in January.

Dr. *** found Student had more than one disability. Student is ***, ADHD, speech impaired, and ***. The combination of these disabilities makes the creation of an appropriate IEP a complex matter. Children with *** need a lot more observation and data gathering, and experiential staff members who are experienced in being able to watch for ***. The proposed IEPs designed for Student did not meet the needs of a child

²⁵⁸ *R.H. v. Plano Independent School District*, 607 F.3d 1003 (5th Cir. 2010).

²⁵⁹ 34 C.F.R. § 300.321.

²⁶⁰ 34 C.F.R. § 300.322.

²⁶¹ *C.M. v. Warren Independent School District*, 117 LRP 17212 (E.D. Tex. 2017).

²⁶² *Andrew F. v. Douglas County School District*, 69 IDELR 174 (2017).

²⁶³ *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

with Student's combination of disabilities. Dr. ***'s findings and recommendations were supported by the testimony of both Ms. *** and Ms. ***. Each made recommendations for the development of an appropriate IEP to address Student's disabilities. However, Respondent failed to consider their recommendations. Respondent failed to adequately address Student's needs pertaining to Student's ***, language impairment, and ***. Student needed more one on one services, as well as additional services from a SLP. Student needed *** and documented, which Respondent failed to do.

A credible IEP cannot be formulated when Respondent is unwilling to conduct an evaluation and chooses to disregard the results of testing done by competent experts in the fields relating to the child's disabilities. In addition, a credible IEP cannot be formulated to address the known disabilities of a child, when Respondent ignores the recommendations of experts in the areas of the child's disabilities, while receiving no input from competent experts of the District's choosing. The deficits in Student's IEP is borne out by Student's failure to make significant progress during the 2016-2107 school year. For example, Ms. ***'s retest of Student in February 2017 showed Student's ** scores had gone down when compared with those in February 2016.²⁶⁴ Although Student was passing *** grade, it is important to take into consideration Student was ***. Additionally, any progress Student made was likely due to the private services Student received at the expense of Parents.

The IDEA is designed to be a collaborative effort by the district and the parents to design an IEP that will result in meaningful educational progress in light of the student's circumstances.²⁶⁵ Districts must provide PWN to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to the child. This notice must include a description of the action proposed or refused by the agency, and an explanation of why the agency proposes or refuses to take the action. The notice must include a description of each evaluation procedure, assessment, record, or report the district used as a basis of the proposed or refused action.²⁶⁶ 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.²⁶⁷ If complaints are not resolved, the parents are entitled to an impartial due process hearing conducted by the state or local educational agency.²⁶⁸

²⁶⁴ Tr. at 501-504.

²⁶⁵ *Andrew F. v. Douglas County School District*, 69 IDELR 174 (2017).

²⁶⁶ 34 C.F.R. § 300.503.

²⁶⁷ 20 USCS § 1415(b).

²⁶⁸ 20 USCS § 1415(f).

In *Winkelman v. Parma City School District*,²⁶⁹ the Supreme Court determined the IDEA provides parents of children with disabilities with their own set of enforceable procedural protections and rights. 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.²⁷⁰

Petitioner alleges Respondent failed to comply with the procedural requirements of the IDEA, including the provision of PWN. The record establishes that Respondent failed to provide PWN to Parents. Respondent also failed to ensure Parents were provided a meaningful opportunity to participate in the process. Respondent failed to consider relevant input from Parents such as the credible expert recommendations of Dr. *** and Ms. ***, and failed to provide Parents with relevant information. The procedural violations of the IDEA including PWN, constitute a failure of Respondent to provide Student with a FAPE.

On August ***, 2016, Respondent had Parent Mom sign a consent for a FIE.²⁷¹ A written report of a FIE of a student must be completed not later than the 45th school day following the date on which the school district receives written consent for the evaluation from the student's parent, except that if a student has been absent from school during that period on three or more school days, that period must be extended by a number of school days equal to the number of school days during that period in which the student has been absent.²⁷² At no time during the 2016-2107 school year did Respondent complete the FIE. Dr. *** and Ms. *** would not recommend getting a consent for a FIE signed by a parent and then not complete the evaluation. Ms. *** testified the Respondent never intended to complete a FIE for Student. Respondent did not inform Parents of the lack of intent to complete the evaluation. Respondent failed to provide PWN by not informing Parents of their decision to not conduct the FIE, and violated the provision governing this evaluation process.

During the hearing witnesses frequently did not know information pertaining to Student's IEPs. Former SPED *** testified she did not know if there was an archived IEP for Student in the eSped system. Current SPED *** testified she was not sure which IEP was in place for Student at the end of the 2016-2017 school year.²⁷³ Parent Dad testified that it was not until the hearing when Ms. *** testified that he knew the October ***, 2016, IEP was supposed to be the one in effect.²⁷⁴

²⁶⁹ *Winkelman v. Parma City School District*, 550 U.S. 517 (2007).

²⁷⁰ *D.B. v. Gloucester Township School District*, 59 IDELR 92 (3rd Cir. 2012).

²⁷¹ RE 3.

²⁷² 19 Tex. Admin. Code § 89.1011.

²⁷³ Tr. at 144-145.

²⁷⁴ Tr. at 1054.

The diagnostician Ms. *** testified Student had met Student's goals in January of 2017. Although the January ARDC was thinking of establishing new goals, she stated that the January *** IEP did not go into effect.²⁷⁵ On April ***, 2017 Parents received PWN reflecting the January *** ARDC meeting.²⁷⁶ Parents did not receive notice the January IEP was not put in place.

The March *** ARD paperwork created more confusion for Parents.²⁷⁷ On May *** the SPED e-mailed Parents informing them there was no March *** ARDC meeting. Rather, Respondent held a staffing instead and the proposed March *** IEP was a result of that staffing.²⁷⁸

There were instances when Parents did not receive a full and complete copy of the ARD paperwork in a timely fashion. Even after repeated requests, Parents were not provided a paper copy of the IEP after the conclusion of the ARDC sessions. They would receive a version of the document up to two weeks later. Upon examination of their copy, it was apparent to them the documents were incomplete. The only means available for Parents to have an understanding of the full extent of the basis for the decisions was to rely on the recordings of the proceedings made Parents. Parents clearly expressed their frustration to Respondent that they were being left out of the IEP process.²⁷⁹

The school service logs provided to Parents contained numerous discrepancies regarding the services provided to Student. These discrepancies created a situation where Parents did not know with certainty which services their child had received. Respondent did not adequately explain these discrepancies to Parents.

Least Restrictive Environment

The IDEA requires children with disabilities be placed in the LRE. To the maximum extent appropriate, children with disabilities, including children 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.²⁸⁰

²⁷⁵ Tr. at 1038.

²⁷⁶ PE 38.

²⁷⁷ RE 13 at 127-128.

²⁷⁸ PE 39.

²⁷⁹ RE 31.

²⁸⁰ 20 USCS § 1412(a)(5)(A).

Student's IEP did not provide Student with appropriate aids and services for Student's particular set of disabilities. Student was regressing. Student's ***. Although Student's placement for the 2016-2017 classroom was in the general education classroom for most of the day, the lack of an appropriate IEP makes such placement not the LRE for Student. Consequently, the mainstreaming of Student without the appropriate aids and services was a denial of a FAPE for the 2016-2017 school year. Petitioner met their burden of proof on this issue.

ESY

The IDEA requires Respondent to ensure ESY services are available as necessary to provide a FAPE.²⁸¹ The need for ESY services must be documented from formal and/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.²⁸²

Based upon the evidence submitted, this hearing officer finds Respondent failed to provide summer 2017 ESY services for Student. Ms. *** testified about the importance of paying attention to a pattern of regressions.²⁸³ Ms. *** documented Student's continued regression in language.²⁸⁴ There was sufficient evidence to determine Student had a need for ESY. Petitioner did meet their burden of proof on this issue.

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.²⁸⁵ The Supreme Court has emphasized that IDEA relief depends on "equitable considerations" and courts enjoy broad discretion when fashioning relief.²⁸⁶ Courts and hearing officers are reminded that the essence of equity jurisdiction is to do equity and to mould each

²⁸¹ 34 C.F.R. § 300.106.

²⁸² 19 Tex. Admin. Code § 89.1065.

²⁸³ Tr. at 563.

²⁸⁴ Tr. at 496-505.

²⁸⁵ *G.L. v. Ligonier Valley School District Authority*, 802 F.3d 601 (3d Cir. 2015).

²⁸⁶ *Florence County School District Four v. Carter*, 510 U.S. 7 (1993)

decree to the necessities of the particular case, meaning flexibility rather than rigidity should be the guide.²⁸⁷ Compensatory education services may be provided in a variety of ways including in the form of private placement.²⁸⁸

In their closing brief Petitioner requests the hearing officer order Respondent to provide Student with compensatory education services in an amount equal to *** hours per day for a total of *** days of school. Petitioner further requests Parents may elect to have Student receive Student's compensatory education services by having Respondent directly pay for Student's private school for the 2017-2018 school year. Petitioner further requests compensatory services for ESY to be provided during the summer of 2018 for no less than *** weeks with *** hours of services a day for *** days a week at a location of Parents choice. Petitioner also requests speech language services *** days a week at *** minutes at Respondent's expense at a location of Parents choice.

Based upon a review of the record, the undersigned finds a request for compensatory education services to be appropriate. Respondent failed to provide Student with a FAPE during the 2016-2017 school year including the summer of 2017.

In *L.M. and M.M. v. Willingboro Township School District*,²⁸⁹ when calculating the award for compensatory services, the court determined there were 6.5 hours in each school day during the school year, and 182 school days in the school year. The court also determined there were 20 days of ESY for each calendar year at 4 hours per day. The court determined 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 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), and *** hours of compensatory services for failing to provide ESY services during the summer of 2017, for a total of *** hours of services. These compensatory services are 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 a compensatory education trust for Student's reasonable educational, rehabilitative, or therapeutic program providers at Petitioner's election.

²⁸⁷ *Lopez-Young v. District of Columbia*, 68 IDELR 186 (D.C. Cir. 2016)

²⁸⁸ *Draper v. Atlanta Independent School System*, 518 F.3d 1275 (11th Cir. 2008).

²⁸⁹ *L.M. and M.M. v. Willingboro Township School District*, 70 IDELR 34 (D. N.J. 2017)

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

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.²⁹⁰ The burden of proof is by a preponderance of evidence.²⁹¹
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, ***, and speech impairment. 19 Texas Administrative Code §89.1040.
7. 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, ***, and speech impairment. 19 Texas Administrative Code §89.1040.
8. 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).

²⁹⁰ *Schaffer ex re. v. Weast*, 546 U.S. 49 (2005).

²⁹¹ 20 U.S.C. §1415.

9. Respondent failed to develop an appropriate IEP for Student during the 2016-2017 school year. 34 C.F.R. §300.320; 34 C.F.R. § 300.324.
10. Respondent failed to provide Student with a FAPE during the 2016-2017 school year. 34 C.F.R. §300.17.
11. Respondent failed to provide Student with ESY services during the summer of 2017. 19 Texas Administrative Code § 89.1065.
12. Respondent failed to provide Petitioner PWN pursuant to the IDEA during the 2016-2017 school year. 34 C.F.R. §300.503.
13. Respondent failed to ensure that Parents were part of the IEP Team. 34 C.F.R. §300.321.

ORDER

Having considered the evidentiary record and the foregoing Findings of Facts and Conclusions of Law, the hearing officer denies in part and grants in part Petitioner's requested relief 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. This reimbursement includes the cost of evaluations and services pertaining to Student and provided during the 2016-2017 school year. This includes reasonable travel expenses attending ARDC meetings and the due process hearing, as well as compensation for her time preparing for and attending these meetings and hearing. Said re-imbursement is to be completed within 30 calendar days from the date of this order. Six percent interest will accrue thereafter for any amount that remains unpaid after 30 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 provide Student with compensatory education services in an amount equal to *** hours for the 2016-2017 school year (***) and summer of 2017, 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 fund 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 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 August 24, 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.²⁹²

²⁹² 34 C.F.R. § 300.516.