

DOCKET NO. 157-SE-0317

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

DECISION OF THE HEARING OFFICER

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

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

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

B. Proposed Remedies

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

1. Order that Respondent denied Student with a FAPE during the 2016-2017 school year and ongoing.
2. Order that Respondent's August of 2016 ARD/IEP denied Student a FAPE for the 2016-2017 school during August, September and October of 2016.
3. Order that Respondent's October 2016 IEP/ARD denied and continues to deny Student a FAPE for the 2016-2017 school year and ongoing.
4. Order that Respondent: (a) hire a *** (***) to teach Student and assist Student with Student's reading comprehension for no less than *** per day; (b) hire an individual qualified to evaluate Student in the area of *** needs and follow the recommendations of that evaluator concerning ***; (c) prepare Respon

7. Order that Student will be provided private services by a qualified provider of Parents choice at a mutually agreed location.

4. In May of 2015, Student received a neuropsychological evaluation from Dr. ***. Dr. *** is a Licensed Psychologist and Clinical Neuropsychologist.¹⁰ Dr. *** determined that Student met criteria for Reading Disorder based on poor reading comprehension. She also diagnosed Student with *** in the DSM-5. Dr. *** confirmed Student's pre-established diagnosis of ***.¹¹
5. Dr. *** recommended that Student participate in speech therapy for *** and *** to help ***, and indirectly improve *** ***.¹²
6. *** through *** (***) conducted a FIE of Student. The FIE report is dated March ***, 2016.¹³ The FIE notes that Student is ADHD and has ***.¹⁴ The report also identifies Student as being dyslexic.¹⁵ Although *** had concerns about Student's reading comprehension and math problem solving, Student was determined to not meet eligibility for a SLD.¹⁶
7. When Student transferred into the District, Respondent was aware Student had problems with reading comprehension and had received *** reading assistance at ***. While at ***, Student's teacher *** noted Student had difficulty ***, and did not *** when Student reads and studies. Ms. *** further noted that the methods she used with Student did not work for Student, but had worked for other students who struggled with reading.¹⁷ Student's math teacher at *** noted Student struggles with comprehension of *** and ***.¹⁸
8. Dr. ***, a Licensed Psychologist and Licensed Specialist in School Psychology (LSSP), evaluated Student in April of 2016.¹⁹ Dr. *** concluded that Student had severe ADHD an002 Tcchuapre8I4(002 ** j -0)r

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

10. Dr. *** tested Student **. Student can have attention problems even though Student **.²³ Dr. *** concluded Student's reading comprehension disability is the result of a problem with Student's ** and **. ²⁴ The ** reading comprehension that Student presents with is **. Dr. *** theorized if Student had **. ²⁵

11. Dr. *** concluded that Student demonstrated an overall General Intellectual Ability Composite of SS

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

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

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

October 2016 IEP

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

⁶¹ PE20 at 4.

⁶² PE20 at 8.

⁶³ PE20 at 9.

⁶⁴ RE26 at 799.

⁶⁵ PE20 at 11.

⁶⁶ RE26 at 789

⁶⁷ RE5.

⁶⁸ Tr. at 352-353.

⁶⁹ RE26 at 789-791.

⁷⁰ RE5.

⁷¹ PE58 at 10-13.

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

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

51. On February ***, 2017, thirteen days after the January *** ARDC meeting, Respondent sent Parents a letter and PWN.¹⁴²
52. Dr. *** attended this January ARDC meeting. She explained her report and communicated that Student does have a learning disability in reading comprehension, and she disagreed with Respondent.¹⁴³

by identifying

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

58.

63. Although Respondent and their counsel knew Respondent was in agreement with the eligibility determination of a SLD for Student, on March ***, 2017 Respondent filed its answer in this due process hearing denying Student's eligibility for services as a student with a SLD.¹⁸⁵
64. On May ***, 2017, Respondent filed an Affidavit of SPED *** with the hearing officer. The affidavit reports on January ***, 2017, Respondent received a supplemental report from Dr. ***, and on the basis of the supplemental report, Respondent determined Student may meet the eligibility requirements for a SLD. The affidavit further reports on March ***, 2017 SPED *** contacted Parent and advised her Respondent was willing to add the SLD eligibility based on the documentation from Dr. ***.
65. On May 9, 2017, Respondent filed Lubbock-Cooper ISD's Response in Opposition to Petitioner's Motion for Partial Summary Judgment. On page 5 of the submission Respondent states, "It was only after Dr. *** provided additional evaluative data on January ***, 2017, showing that the student had a standard *** of ***, that Respondent concluded the student met the eligibility requirements under SLD."
66. On May ***, 2017, Respondent's ** 0.-0.004.MCID 24 >>BspanC -3 -1.815 Td (-)-0.08- -0.02 T886MCID 21(")]TJ 0 TCID 24 >>BspanC -3 -1.885 Td (-)-0.08- -0.02 T8p88MCID

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

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

72. During ARDC meetings, Respondent types the IEP on a computer. However, Parents are not able to see what is on the computer.²¹⁶ Sometimes the IEP

working document at the IEP meetings, which Respondent does not provide.²²⁸ Respondent is capable

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

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

The Supreme Court has directed a school district's liability for violations of the IDEA is a two-

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

The Fifth Circuit has set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These factors are whether (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the LRE; (3) the services are provided in a coordinated and collaborative manner by the key stakeholders; and (4) positive academic and nonacademic benefits are demonstrated.²⁶¹

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

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

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

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

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

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

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

²⁶³ PE8 at 2.

²⁶⁴ Tr. at 239-240.

²⁶⁵ Tr. at 346.

²⁶⁶ Tr. at 347.

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

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

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

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

²⁶⁷ RE16.

²⁶⁸ RE9.

²⁶⁹ Tr. at 368-371.

²⁷⁰ Tr. at 368.

²⁷¹ Tr. at 440-444.

²⁷² Tr. at 368-371.

²⁷³ Tr. at 368-371.

²⁷⁴ Tr. at 370-371.

²⁷⁵ RE16; Tr. at 413-414.

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

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

Respondent is also ORDERED to engage the services of Dr. *** at Respondent's ajondentLD forn to the tade 1 7

***.

***. ***. ***.²⁷⁷

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

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

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

Although Student experienced educational issues at the District during the 2016-2017 school year, Respondent did not complete appropriate evaluations of Student, nor did Respondent request consent to complete same. Despite strong evidence from Dr. *** and Ms. *** regarding the needs of Student,

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

Respondent must ensure that the IEP team for each child with a disability includes the parents of the child.²⁹¹ Respondent must take steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are afforded an opportunity to participate including: (1) Notifying parents of the meeting early enough to ensure that the

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

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

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

This hearing officer findd9xf211-6(n)-8(g)-4(o)6(f)-1(f)-11(92e)6(nin)(g)wit-1(e)- 004 Tw [(P)-8(ar)-1(en)-4(t)-6

compensatory education services to be appropriate. Even though Respondent had been provided with sufficient documentation, Petitioner's request for the addition of a SLD to Student's eligibility went ignored by Respondent for

issue of Student, Respondent did the opposite. 19 Texas Administrative Code §89.1185(m) states that at the request of either party, the hearing officer must include in the final decision, specific findings of fact regarding whether the parent or public agency unreasonably protracted the final resolution of the issues in

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

VII. ORDER

1. Respondent is ORDERED to reimburse Petitioner for all costs of Dr. ***'s services pertaining to Student during the 2016-2017 school year, including the summer of 2017. This reimbursement includes the cost of evaluations and services provided during the 2016-2017 school year, it also includes but is not limited to travel expenses attending ARDC meetings and the due process hearing, as well as compensation for her time preparing for and attending these meetings and proceeding. Said re-imbursement is to be completed within 45 calendar days from the date of this ORDER. Six percent interest will accrue thereafter for any amount that remains unpaid after 45 calendar days from the date of this Order. Petitioner is to provide Respondent with receipts regarding these expenses within 15 calendar days from the date of this Order.

2. Respondent is ORDERED

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

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

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

SIGNED and ENTERED on July 31, 2017.

Sherry Wetsch
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

This Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decision made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any State court of competent jurisdiction or in a district court of the United States.³²⁷

³²⁷ 34 C.F.R. §300.516.