TEA DOCKET NO. 158-SE-0317

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.

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.

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

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	***	

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 lack0 Tw (-)Tj 0 0 Td]Tw

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 testifd sThIE, 2 /TT0 12t04 Tw 0.28 0 Td [(an)-4(d)]T80.004 T5TT0 1(E)9048 Tw 0. 0.31

71. According to Dr. ***, ***. Dr. *** informed

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

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

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 ***, 3017.[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 **ioo Tw ccued2(s)-12(a)4(t)72(e)4((.]TJ

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

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.

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

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 calen

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.