

Before the
Administrative Hearing Commission
State of Missouri



and, IN THE INTEREST OF,)
)
Petitioners,)
)
v.) No. 17-0076
)
CROCKER R-II SCHOOL DISTRICT,)
)
Respondent.)
)

DECISION

and (Parents) filed a due process complaint against the Crocker R-II School District (District), alleging that the District failed to provide their son (Student) with a free appropriate public education (FAPE) pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et seq.*¹ We find the District failed to provide Student with FAPE in 2017 because it invited a police officer and school superintendent to Student’s Individualized Education Program (IEP) meeting, failed to provide notice to Parents and Student as to the officer and superintendent’s presence at the meeting, and failed to timely administer a nonverbal IQ test to Student. We order the District to provide Student with compensatory services in the area of language therapy.

¹ did not sign the due process complaint, but he was added as a party on February 17, 2017.

Procedure

On January 26, 2017, filed a due process complaint against the District on behalf of Student with the Missouri Department of Elementary and Secondary Education (DESE). On January 27, 2017, we sent to the parties a notice of pre-hearing conference and notice of hearing, which we scheduled for February 16, 2017 and March 2-3, 2017, respectively. On January 31, 2017, Parents filed a motion to stay put. On February 6, 2017, District filed a motion to extend timelines for its responses to the complaint, motion to stay put, pre-hearing conference, hearing dates, and for subsequent decision date. On February 6, 2017, we granted the District's motion for an extension of time to file its responses to the complaint and motion to stay put, and denied the remaining requests.² On February 14, 2017, the District filed a memorandum in opposition to Parent's motion to maintain the student's placement under the "stay put" provisions of IDEA, and filed a response to the due process complaint, and its pre-hearing conference statement. On February 14, 2017, Parents filed their pre-hearing conference statement. On February 16, 2017, we held a pre-hearing conference and orally granted the motion to stay put. On February 17, 2017, we issued a prehearing conference order in which we further stated that Student was to continue in his current educational placement, including all coursework and time frames outlined in the November 2016 IEP. The order also included Parents' right to quietly review Student's educational records and reset the hearing dates to March 8 and 9, 2017.³ On March 8 and 9, 2017, we held a hearing in this matter and left the record open for the testimony of Student's special education teacher, Deidre Towns. At the hearing, Parents appeared in person without counsel, and the District was represented by

² On February 10, 2016, Parents filed a response opposing the District's motion to extend timelines.

³ In the order, Parent () was reminded to act in a manner that is respectful to all students and school personnel when reviewing the records.

Elizabeth A. Helfrich and Sara A. Schmanke. On March 14, 2017, the court reporter filed the transcript. On March 22, 2017, testimony was taken via conference call of Ms. Towns. This case became ready for decision on March 29, 2017, when the last briefs were filed.

Findings of Fact

1. Student is a -year-old boy who resides with his Parents within the boundaries of the District, and will turn 18 years old on.
2. Prior to the 2016-2017 school year, Student was home schooled for approximately 10 years.
3. Student is eligible for special education services under the category of specific learning disability (primary).⁴
4. The 2016-2017 school year began on August 18, 2016.
5. On August 8, 2016, (Ms.) went to Crocker High School to enroll Student as a freshman, and she informed the school counselor, Mary Beth Kincaid, that Student needed to be assessed for special education services due to his disabilities.
6. On August 8, 2016, Kincaid provided Ms. with school enrollment papers.
7. On August 9, 2016, Ms. returned to the school with the completed enrollment papers, and spoke with Phillip Gambill, Special Services Director at the District.⁵ During the conversation between Gambill and Ms. , the following occurred:
 - a. Ms. discussed her understanding of Student's disabilities and asked that Student be evaluated for special education services as soon as possible and stated she was willing to bring Student into school before the school year began.
 - b. Gambill provided to Ms. a parent questionnaire, a referral for special services form, a procedural safeguard form, and the parental bill of rights.

⁴ Student's IEP also states he was diagnosed for Auditory Processing Disorder (APD) and has a language impairment.

⁵Gambill is certified in special education, kindergarten through twelfth grade.

- c. Ms. provided Gambill with several prior assessments and tests pertaining to Student from different sources that dated between 2004 to 2006, in which it was reported, in part, that Student: i) had a significant sound production disorder and was diagnosed with speech disturbance, auditory processing, and oral motor dysfunction; ii) had moderate to severe delayed receptive and expressive language skills; iii) had an intellectual function in the average range and he did not meet specific eligibility for special education services as learning disabled, but met the specific eligibility for special education services as a student with a speech impairment; iv) fit the profile that characterizes an individual at risk for the language-based reading disability of dyslexia; and d) would benefit from intensive tutoring in articulation, reading comprehension, writing, and spelling.
 - d. Gambill skimmed the reports and assessments, and determined they were too old to be reliable.
 - e. Gambill also explained to Ms. that there was a 30-day screening process to review existing data and then a 60-day period after the school receives a signed consent form from her and then an additional 30 days to write an IEP, if warranted based upon the outcome of the evaluation.
 - f. Ms. informed Gambill that he was wrong and she wanted to sign the consent to evaluate that day so that the school would have 60 days to evaluate and complete an IEP for Student as of the current date.
8. On or about August 9, 2016, Ms. completed and returned to the school the special services referral form, and she indicated on the form that Student's speech was an area of concern, and she specifically stated "oral motor dysfunction articulation auditory processing receptive and expressive language." She also noted that Student was below expected achievement in reading, math, and written expression. Ex. 15.

General Education Classes

9. At the start of the school year, Student was placed in general education classes in which he had difficulties. For example, Student had trouble keeping up with note taking in his history class.
10. Student's handwriting is not legible enough for him to be able to rely upon his notes from which to study.

11. In October 2016, at a parent-teacher conference, Parents and Student's history teacher discussed Student's poor handwriting, and they both expressed concern that it may prevent Student from passing the course.

12. Parents explained to the teacher that Student had disabilities that resulted in his poor handwriting, and everyone agreed that Ms. could go to the classroom each week to take photographs of the teacher's handwritten lesson plans to assist Student.⁶

13. Immediately after the parent-teacher conference, Parents talked with Principal Heath Waters after running into him in the hallway. Parents inquired about whether they had to check in at the front desk each time Ms. came to take photographs of the lesson plans, and the Principal told them they did not need to check in each time.

14. School policy states that visitors are to check in at the high school office and receive a visitor's badge and state why they have business at the school and get permission to be in the building.

15. On or about November 7, 2016, the Principal stopped Ms. in the school hallway on her way to the history teacher's classroom. He explained that the school had a sign-in policy for each visitor and appeared to have forgotten his prior conversation with Parents.

16. Ms. questioned the Principal and wanted to know the exact sign-in procedure. She asked if she had to sit in the lobby until she was given permission. The Principal said "yes" she would have to do this, and Ms. replied, "so if you're in a meeting, I have to sit out there for an hour or two hours until you give me permission." Tr. 23.

⁶ Ms. went to the school a couple of times to take photographs of the lesson plans before Student was moved into special education courses, and Dad transferred the information to a Word document, which took substantial time.

17. The Principal informed Ms. that such a scenario was not typical, but “yes, until you have permission, you are not allowed to go down our hallway.” *Id.*

18. Ms. expressed frustration by pointing her finger at the Principal and stating in a louder voice that he was not being clear and that he was being difficult. At this point, the Principal informed Ms. that the meeting was over and she needed to leave his office. Ms. left.

District’s Evaluation of Student

19. On September 6, 2016, the District administered to Student a vision and hearing screening wherein Student stated he could not hear any sounds.

20. Because the District was aware Student could generally hear sounds, the District followed its normal practice to wait one to two weeks before administering a new test in order to ensure that any build-up or infection in the ear has cleared up.⁷

21. Due to not passing the hearing exam, Ms. scheduled an appointment for Student to have his hearing tested.

22. On or about September 15, 2016, Ms. was notified in writing that a meeting would be held on October 3, 2016, to review Student’s existing data as part of an initial special education evaluation. Ms. informed the school that the meeting needed to be rescheduled due to a previously scheduled doctor’s appointment that same day.⁸

23. On September 28, 2016, the District administered to Student:

- a. Another hearing test that Student passed. The report noted that Student stated his “Eyes will see things once then when he look [sic] again it will disappear, and letters will move around and make there [sic] own words.” Ex. E.

⁷ Ms. testified that she felt this was a delay tactic used by the school to not timely evaluate Student. No evidence was presented to support this opinion. Student was not questioned about the hearing exam in his testimony.

⁸ This was the date Ms. had scheduled Student to have his hearing tested.

b. The Hawthorne LDES-R2, a district assessment, and it was determined that Student's Star Reading Standard Score was 395 with a grade equivalent of 3.4 and an instruction reading level of 3.4. His Star Math Standard Score was 558 with a grade equivalent of 3.5 and a percentile rank of 3.0. Ex. E.

24. The school rescheduled the October 3, 2016 meeting to September 30, 2016.

25. Ms. was orally notified of the meeting being rescheduled to September 30, 2016 that same morning. Ms. was upset by the late notice, but she was able to attend the meeting.⁹

26. On September 30, 2016, the review meeting was held with the following individuals present: Phillip Gambill (individual to interpret instructional implications of evaluation results and local educational agency representative), Amber Iven, (regular classroom teacher), Deidre Towns (special educator) and Ms. .

27. At the meeting, the attendees reviewed information pertaining to Student that was summarized in a Review of Existing Data Documentation Form.¹⁰ The summary was based upon the following documents: a) intervention/screening data; b) parent records/reports; c) teacher records/reports and d) review of existing data.

28. At the meeting, the attendees determined that:

- a. Student's fine motor skills were within reason and no additional testing was required.
- b. Student's cognitive function was within average to below average range, and it was recommended that in the area of general intelligence that Student be administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V).

- c. It was recommended that Student be administered the Wookcock Johnson Test of Achievement-Fourth Edition (WJ-IV).

⁹ There was a discrepancy in the testimony as to whether Ms. attended the September 30, 2016 meeting. According to Ex. 18, she signed that she attended the meeting and was provided verbal notification of the meeting by phone.

¹⁰ The report stated in different locations that the meeting occurred on September 30, 2016 and October 3, 2016, and it makes reference to Julia Cooke's assessment of Student on October 11, 2016. Ms. indicated at hearing that she felt documents were being altered. Instead, it appears the school updated the electronic report as it went along and did not keep copies of the older versions of the report.

- d. Student did not require any assistive technology and no additional assessment in this area was required.
- e. In the areas of Student's disability, a formal observation was required to complete eligibility requirements.
- f. Mother informed the attendees that Student had trouble with handwriting and use of scissors, and he had both receptive and expressive language difficulties.
- g. The District personnel considered the Student's reports and assessments from 2004-2006 to be too old to be of much value.
- h. The District personally presented to Ms. a Notice of Action seeking consent to conduct an initial evaluation of Student based upon screening, parent, teacher records and review of existing data.

29. On October 3, 2016, Ms. had Student's hearing evaluated, and his audiogram was normal in both ears with "excellent speech understanding bilaterally." Ex. F.

30. On October 4, 2016, Ms. signed the consent for initial evaluation, and understood the areas to be assessed and tests to be administered as discussed on September 30, 2016. Ms. agreed to the tests being carried out in less than ten days.

31. On October 11, 2016, Julia Cooke, a contract speech language pathologist (SLP) for the District, screened Student for speech sound errors, sentence structure, use of grammar, vocabulary use, and language organization. Her screening covered both speech and language,¹¹ and she concluded:

- a. Student's speech was "fully intelligible with occasional distortions of the /r/ sound," and he was "stimulable for correction of misarticulated words with brief instruction and practice."
- b. Student should practice at home and a clinician would visit with him in several weeks to monitor progress.

¹¹ According to Cooke, "Speech is the actual physical production of speech sounds in sequence to produce words." Language is an evaluation of both receptive (does the student understand what he hears) and expressive (is the student able to explain what he understands by formulating sentences correctly which entails a lot of components). Tr. 227.

- c. No further assessment of Student's speech was necessary because Student was using correct sound production more than 80% of the time during the screening.
- d. With regard to Student's communication skills, Cooke noted that Student's responses were brief and lacked detail, and she recommended a "Clinical Evaluation of Language Fundamentals-Screening Tests, language sample, Clinical Evaluation of Language Fundamentals-5 (CELF-5) (if needed)."¹²
Ex. J.

32. Cooke holds a master's degree and is licensed as an SLP. She has worked in speech language pathology since 1996.

33. During Cooke's screening of Student, she did not hear characteristics common in students with central auditory processing disorder (APD).

34. Cooke is not qualified to diagnose APD. Such a diagnosis is made by a series of specific tests in sound booth conditions in which the student participates. These are multiple tests that require sustained attention and sufficient maturity to follow complex directions. In Missouri, audiologists do not administer the tests until the student is seven years old, and any reported prior diagnosis from Student's past records would not meet such standards.

35. Cooke reviewed some, but not all, of Student's past evaluations and she was not aware that one of the reports indicated that Student was previously diagnosed with "auditory processing." However, after the fact, she determined that such past reports were too old to be of value.

36. On October 17, 2016, Student was administered an occupational therapy screening in which such services were not recommended. The report noted that Student

¹² On or about this time, the District also determined that no further assessment of Student's speech was necessary and adopted Cooke's recommendation for further assessment of Student's communication skills.

“demonstrates increased difficulty completing handwriting tasks, demonstrating decreased legibility due to decreased letter size and line placement.” Ex. 13.

37. On October 26, 2016, Student was administered the WJ-IV.

38. On October 27, 2016, Student was administered the WAIS-IV.

39. On or about November 4, 2016, Ms. informed Gambill that the assessment of Student was taking too long. Gambill stated that they would probably have it in a week.

40. On or about November 4, 2016, the District mailed out a notification of a meeting scheduled for November 15, 2016, to Ms. and Student to determine initial eligibility for special education services for Student and to develop an IEP.

41. Ms. did not receive her written notification.¹³

42. On November 7, 2016, Cooke administered to Student the CELF-5.¹⁴ Based upon Student’s scores, she determined that Student did not qualify for language therapy services because his test scores were within a predicted range compared to his cognitive score.

43. The CELF-5 does not evaluate for APD.

44. Because Student’s scores were in the 60s and 70s, and Student’s first IQ test was also in the 70s, Cooke determined there was not a discrepancy in the scores that qualified Student with a speech or language disability.

45. Student’s scores did not have a discrepancy close to 22 points, or even the 15 points needed to be considered significant by one or two standard deviations; therefore, Cooke

¹³ Ms. testified she did not receive her notification, and the copy produced by the District was not addressed to Ms. or Student.

¹⁴ The test is a nationally normed language test that consists of multiple subtests that evaluate a variety of receptive and expressive language skills.

did not utilize a professional judgment standard to determine that Student was language impaired per DESE qualifications for educational disabilities.

November 15, 2016 IEP Meeting

46. Because Ms. did not receive her written notification of the November 15, 2016 IEP meeting, she learned of the November 15, 2016 meeting that same morning. While an inconvenience to her, she and Student were able to attend.

47. Also in attendance was Phillip Gambill (individual to interpret instructional implications of evaluation results and LEA representative), Amber Iven (regular classroom teacher), and Diedre Towns (special educator). Julia Cooke was not invited and did not attend.

48. Ms. was provided a copy of the District's Evaluation Report of Student at the November 15, 2016 meeting. The report stated, in relevant part:

- a. Teachers describe Student's social skills as below average to average.
- b. The CELF-5 subtest scores ranged from below average to poor, which indicates Student's verbal language skills are not "sufficient to access the general high school curriculum material without accommodations or modification."¹⁵
- c. Student "does not qualify for language therapy services" because, "[h]is test scores are within the predicted range compared to his cognitive score."
- d. The WAIS-IV was administered to Student in the areas of verbal comprehension, perceptual reasoning, working memory, processing speed, and his full scale IQ was 73, which "classified his cognitive abilities to be within the Borderline range." "According to Missouri criteria, the criterion level is 51 and below for this Full Scale IQ score . . . [t]his criterion level can be used in establishing a significant discrepancy between achievement and ability at 1.50 standard deviations or below."
- e. Student was administered the WJ-IV in the areas of reading, broad reading, basic reading skills, reading comprehension, fluency, mathematics, and written expression. His academic scores fall in the 70s and 60s range, which is fairly close to his functional IQ level of 73.

¹⁵ The relevant subtest categories and composite areas of the CELF-5 were: a) word classes/core language score; b) following directions/receptive language index; c) formulated sentences/expressive language index; d) recalling sentences/language content index; e) understanding spoken paragraphs/language memory index; f) sentence assembly; and g) semantic relationships.

- f. It was noted that if Student is found eligible for special education services that transition needs would need to be addressed within the development process of the IEP, and Student had expressed an interest in computer programming.
- g. The diagnostic team concluded that Student was eligible for special education services in the area of specific learning disabilities in accordance with IDEA regulation 300.306(c)(1), and he needed individualized instruction in all academic areas.¹⁶
- h. There was no discussion of assistive technology, and neither Ms. nor Student requested any.

Ex. J.

- 49. At the November 15, 2016 meeting, the following occurred:
 - a. Gambill explained that Student did not qualify for special services based on testing alone because Student did not have a 1.5 deviation between his IQ score and the achievement scores to determine if a child had a special learning disability; however, based upon Student's academic scores and general intelligence scores a determination was made based upon professional judgment that Student qualified for special education services.
 - b. Ms. was upset about Student's IQ score because she felt it was too low.
 - c. Ms. requested a non-verbal IQ assessment.
 - d. Ms. signed the evaluation summary stating she had an opportunity to review existing evaluation data, and participated in the determination of eligibility/ineligibility.
 - e. The District agreed to provide Student with a nonverbal IQ test in the area of cognitive ability, and Ms. signed a Notice of Action to allow such testing.¹⁷
 - f. Ms. also informed the IEP team that she had an appointment for Student to be evaluated by an audiologist at the end of the month for APD.

¹⁶ According to the Evaluation Report, Ex. J, using language from State Plan, Regulation III, §2, page 24, a specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations . . . [i]t includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia . . . [i]t does not include learning problems that are primarily the result of a visual, hearing, or motor disability; mental retardation/intellectual disability; emotional disturbance, cultural factors, environmental or economic disadvantages; or limited English proficiency.

¹⁷ The District generally would not administer a nonverbal IQ test to Student since he was able to verbally communicate, and verbal students tend to get a higher scores when they take a nonverbal IQ test.

The IEP team stated they would consider any subsequent reports and amend the IEP accordingly, if necessary.

- g. Ms. was upset that Cooke was not invited to attend the meeting as she had provided prior information about Student's speech issues. There is no evidence Ms. had previously requested Cooke's presence at the meeting.
- h. The attendees discussed a draft IEP that was brought to the meeting by Gambill; and they made a few changes to it.
- i. The attendees consented to and signed off on the IEP for Student with the understanding that additional testing was to be conducted on Student and a revised IEP may be necessary.

50. The IEP stated that Student would receive the following weekly special education services in a special education classroom:

- 250 minutes in math;
- 250 minutes in science;
- 125 minutes in reading;
- 350 minutes in Social Studies;¹⁸
- 250 minutes in specialized material (life skills); and
- 125 minutes written expression; for a
- Total of 1250 minutes of special education and 720 of regular education for a total of 1970 minutes at the Crocker High School.¹⁹

51. The school recognized Student was struggling in a generalized setting and wanted to quickly move him into a special learning environment that consisted of a small-group setting where he could obtain more individualized attention.

52. Student was immediately provided special education services, with the understanding that the IEP may need to be amended based upon additional test results.

53. The initial IEP contained annual measurable goals with progress on the goals to be reported to Parents quarterly, a post-secondary transition plan, notification to Student

¹⁸ Social Studies was inadvertently left off the initial agreed upon IEP, but was later amended to reflect the parties' agreement on November 15, 2016.

¹⁹ Student received physical education and health in a general education classroom.

regarding transfer of rights at the age of 18, independent living goals, and noted accommodations of multiplication tables for math and speech-to-text for ELA, math, science, and social studies.

Additional Testing: APD and Nonverbal IQ

54. On November 28, 2016, Student was administered an APD evaluation by a licensed audiologist, Jack Katz, Ph.D., CCC-A/Sp, at Ms. 's request. The report, Ex. 6, indicated, in part, that Student:

- a. Was diagnosed with dyslexia 10 years ago and has difficulty locating the source of sounds and relies on vision at school.
- b. He “has a number of behavioral characteristics often associated with APD which include: confused in noisy places, easily flustered, forgetful, difficulty maintaining proper sequences, mixes up speech sounds, needs quiet to study, sensitivity to loud sounds, short-term memory problems, trouble following directions, telling where sounds are coming from, and understanding TV.”
- c. Demonstrated “significant findings on the central test battery.”
- d. The APD indicators provide evidence of Decoding, Tolerance-Fading Memory, Organization, and Integration categories. These factors likely have a significant impact on Student’s ability to perform in school, especially under noisy/poor acoustic conditions.
- e. Student has all four types of APD: Decoding (DEC), Tolerance-Fading Memory (TFM), integration (INT) and organization (ORG) and it was recommended, in part, that any remediation include training on phonemic, phonemic synthesis, phonemic analysis, speak-in-noise desensitization, short-term auditory memory, dichotic offset, and sequencing. It was also recommended that Student sit close to the teacher and consider using an assistive listening device.

55. Ms. received the report on or about December 12, 2016.²⁰

56. APD is a weakness in organizing the auditory signal that comes into the brain.

Sound sequences are sometimes disorganized. There are varying levels and types of the disorder. Every case is a little different, and over time an individual may learn to adapt to the disorder. The disorder can make language hard to learn and lead to problems learning to read.

²⁰ The school’s winter break began December 21, 2016, and ended January 4, 2017.

Individuals with APD always have a weakness in auditory memory. Older students compensate by using written directions and instructions. The use of paraphrasing and visualization can be helpful. Ambient noise in a classroom can be problematic for a student to focus on a teacher's voice.

57. On January 4, 2017, Ms. provided Gambill a copy of Dr. Katz' report, and asked about the status of the nonverbal IQ test.

58. Gambill stated he was waiting on Dr. Katz' report before administering the nonverbal IQ test.

59. Gambill provided a copy of Dr. Katz' report to Cooke, as she was the one responsible for making any necessary changes to the IEP.

60. The results of the nonverbal test, which was administered on January 12, 2017, indicated that Student was within the low average to the average range in all subtests with a full scale score of 97, which was within average range, and Student qualified for special education services without the need to use professional judgment to determine eligibility based upon a finding that Student had a special learning disability in math, English, written expression, and he was qualified for language services.

61. Upon receipt of the Student's nonverbal IQ score, Cooke was pleased with the results, as she knew the District could provide Student with language services because the discrepancy criterion was met.

62. Cooke recommended that Student's IEP be amended to include an additional 40 minutes per week of language therapy with two new stated goals of:

- a. Language – Student will increase his expressive language skills by completing therapy tasks with 80% accuracy during the term of this IEP and this goal will be measured through an observation chart.

- i. Explain relationships between academic vocabulary words (e.g., liquid/solid, predator/prey, capitol/nation, fraction/numerator, etc.) (baseline: 30% new goal).
 - ii. Construct complete, grammatical sentences to describe pictures or story events, using subordinate conjunctions (e.g., when, if, unless, until, etc. (baseline 30% - new goal).
- b. Auditory Training – Student will increase his auditory processing skills by completing language therapy tasks with 80% accuracy during the term of this IEP and progress will be measured by an observation chart:
- i. Accurately imitate sentences of a least 12-15 words (e.g., descriptions, event sequences, jokes) using learned strategies (e.g., tactile cues, chunking, etc) (baseline: 8 words).
 - ii. Follow verbal directions containing at least 8 descriptive elements related to attributes, spatial concepts, and/or sequence. (e.g., give me two red and yellow blocks, a square blue block, and the last green block. Write your name in the lower left corner of the page, then list three fruits and two vegetables. (baseline 5 elements). Ex. R.

January 4, 2017 Interactions Between Ms. and Gambill

63. On January 4, 2017, after Ms. provided Gambill the report of Dr. Katz, she stated that the school had 10 days to schedule another IEP meeting.

64. Gambill informed Ms. that the District had a reasonable amount of time to schedule the meeting, and Cooke needed some time to review the report because she was only present at the school on certain days, as she is a contract employee.

65. Ms. was also left with the impression that Gambill would not schedule another IEP meeting because Gambill stated that such meetings are only conducted one time per year.

66. Ms. became frustrated and restated the District had 10 days to schedule a meeting.

67. Ms. was also upset that the nonverbal IQ test had not been conducted.

68. Ms. and Gambill were stationed on either side of a counter, and Ms. raised her voice and pointed her finger at him and stated that the school had been waiting too long and using stalling tactics.

69. Gambill did not raise his voice to Ms. .

70. The conversation was overheard by the school custodian, who called the school's resource officer, a police officer stationed at the school and referred to as a school resource officer, who is frequently around the building.

71. The resource officer arrived in the office, and Ms. immediately left.

January 17, 2017 Scheduled IEP Meeting

72. On January 4, 2017, the District mailed to Ms. and Student a notification of meeting for January 12, 2017, to review/revise Student's IEP. According to the notification, the following individuals were invited: Phillip Gambill (individual to interpret instructional implication of evaluation results and LES representative), Emma Englemeyer (regular classroom teacher); Diedre Towns (special educator), Julia Cooke (SLP), Ms. and Student.

73. The notification stated, "The Family Educational Rights and Privacy Act (FERPA) requires a written Release of Information MUST be obtained for other persons invited by the parent or LEA to share confidential information at the IEP meeting." Ex. O (emphasis in original).

74. Ms. was notified of the January 12, 2017 meeting on January 10, 2017.

75. On January 11, 2017, Ms. informed the school she was not available on January 12, 2017, because of a prior commitment. Ms. expressed that she expected a meeting to be scheduled within five business days, and she was available that Friday or the following week. She also stated that she expected the SLP to be present at the meeting in that she did not attend the November IEP meeting. Further, Ms. stated in an e-mail:

I am still requesting that the Speech Language Pathologist be there, (due to the fact that she did not attend the meeting in November). I request the meeting be taped due to last Wednesday when per my understanding you stated that IEP meetings are only done once a year, and that we would not have a meeting nor changing the IEP [sic]. I have further requested a meeting with the Speech Pathologist in November and until now, one was not set up. Last week you called security after you stated no IEP meeting and I had stated that I am requesting the meeting and that you can not tell me no IEP Meeting and IEP's can't be changed but once a year. As I stated to you last Wednesday if this is true and if this is school's viewpoint on IEP's then it should be put in writing. I feel that you and the school are harassing me, trying to use intimidation tactics, and not taking my concerns seriously. I feel that you are trying to use intimidation tactics and I CAN NOT allow you nor the school to do. I had informed you in the November meeting that I was taking [Student] to be evaluated for Auditory Processing Disorder, and we would need to meet afterwards. That is why I brought the evaluation to the school last Wednesday, and to set up a meeting with the school. You may have forgotten this because there were no minutes in the November meeting for you to refresh your memory.

Please further understand that I am requesting all further communication with you to be in writing either by email or USPS unless it is taped. And Please don't go into the classroom and have [Student] relay messages to me that is unfair to the child. This was done for November's meeting. Ex. 8.

76. On January 15, 2017, Gambill informed Ms. via e-mail that Cooke was available January 17 or 25, 2017, and that Student was administered a nonverbal cognitive assessment on January 12, 2017, and Gambill was waiting on the results.

77. Gambill suggested the meeting occur on January 25, 2017, so that the audiology report and the cognitive assessment report could be reviewed.

78. Ms. informed Gambill that she wanted the meeting on January 17, 2017 in that, "We are waiting too long for getting the testing back . . . [y]ou should have the report for the non verbal cognitive assessment by Tuesday." Ex. 8

79. Ms. further stated in an e-mail that she had requested the testing in November, Student had already started a new semester, it had been over 60 days since she requested the test, and she had informed Gambill back on August 9, 2016, that Student had auditory processing issues.

80. On January 16, 2017, Gambill informed Ms. that the school could meet the following day to discuss the audiology report with Cooke.

81. On January 17, 2017, the District came prepared to discuss amending the IEP to include Cooke's recommendations for language therapy and to reflect Student's APD diagnosis.

82. Dr. Doerhoff, School Superintendent, attended the meeting to explain the District's policy on not recording IEP meetings. Mr. Doerhoff also invited the school resource officer due to previous incidents between Ms. and Gambill and Principal Waters.²¹ No written release of information was obtained allowing either one to attend in accordance with the notification of meeting since they had not previously been listed as having been invited.

83. The District maintains a policy that prohibits the use of audio, video, or other recording devices at IDEA meetings, and exception to this prohibition will only be allowed in accordance with Board policy and law. Requests for exceptions must be made within a reasonable period of time.

84. Prior to the start of the January 17, 2017 meeting, the District did not respond to Ms. 's request that the meeting be taped.

85. Prior to the start of the January 17, 2017 meeting, Parents and Student had not been notified of the presence of the resource officer or Dr. Doerhoff at the meeting.

86. Doerhoff and Gambill felt it appropriate to have a resource officer present due to Ms. raising her voice and pointing at Gambill and Principal Waters during past conversations.

²¹ A "school resource officer" is a career law enforcement officer with sworn authority, who is deployed by an employing police department or agency in a community-oriented policing assignment to work in collaboration with one or more schools. They are intended to provide safe learning environments, foster positive relationships with youth, develop strategies to resolve problems affecting youth, and protect all students so they can reach their fullest potentials. Website of National Association of School Resource Officers, Frequently Asked Questions page, <https://nasro.org/frequently-asked-questions/>, viewed March 30, 2017.

87. The school resource officer sat next to Ms. at the meeting.

88. Ms. became upset that the resource officer joined the meeting. She took out her phone to begin recording the meeting and then discontinued. Ms. left the meeting before any substantive issues could be discussed regarding Student, as Ms. was afraid she may be arrested and did not want Student's confidential information shared with the school resource officer.

89. The school did not have Student present at the meeting, although he was at school. Ms. did not inquire as to Student's whereabouts or why he was not in attendance at the meeting.

IEP Implementation

90. Since the November 15, 2016 IEP was implemented, Student has received special education instruction from Towns and is receiving good grades in his special education classes.

91. Towns has been employed as a special education teacher at the District for approximately three years. Prior to that, she worked at another school district for 13 years.

92. Towns has a Bachelor's Degree in Elementary Education, a K-12 Cross Categorical Special Education Certificate, and a Master's Degree in Administration K-12 and Special Education Administration.

93. Towns is very familiar with the IEP process.

94. Student believes he is not being challenged enough in his special education classes, and stated that at times he is given "kindergarten stuff." Tr. 421.

95. Student is reading in a group of special education students, and he receives individual instruction in math.

96. Towns is aware that Student tested at a third grade level in math and reading and takes this into account with his assignments. She at times educates Student at a fourth and fifth grade level, as she has high expectations of Student.

97. Student is not assigned work below a third grade level. He has done simple addition, subtraction, and multiplication, but not as a lesson. Instead, Towns does this for fluency practice to keep his skills strong which builds upon an algebra area that he will move into.

98. If he finishes his work early, Student has free time as a reward. He can work independently.²²

Bullying

99. Student talked with Principal Waters about another student bullying him at the beginning of the school year.

100. Student does not report that he was bullied due to his disabilities.

101. Ms. also spoke with Principal Waters the first week of school regarding Student's report of being bullied by another student, and Principal Waters said he would handle it.

102. Student felt the issue was finally addressed when he fought back with the other student early in the school year.

103. In October 2016, Ms. spoke with Principal Waters about Student's statements that his history teacher was calling him names, had cursed at him, and thrown a book at him.²³

²² The record is not clear as to how much free time Student is provided.

²³ Waters testified that Ms. did not have this discussion with him. We find Ms. 's testimony more credible in that her nature, as demonstrated through the evidence, is one to quickly address such issues with school personnel, and we find Student's testimony credible that he informed Ms. of such information.

104. In October 2016, Ms. spoke with Andrew Lowe, School Board Member, and told him that Student had stated to her that he was being called names, cursed at, and had a book thrown at him by his history teacher.

105. Lowe stated his children liked the teacher, and he did not get the impression that any imminent danger existed for Student.

106. Student was uncomfortable in his history class and was emotionally upset when discussing his interactions with his teacher.²⁴

107. Student has not experienced any negative interactions with teachers or students while attending special education services, and he did not testify that he has experienced any problems with learning or participating in special education classes due to such reported behavior.

108. The District has a bullying policy in place, including a bullying incident report form.

109. In February 2017, Ms. went to the school to review Student's education file. She was provided the file at the school counter while Gambill and his assistants talked about an upcoming trip.

110. Ms. asked if she could use Gambill's office to review the file and she was told "no" due to an upcoming IEP meeting.

²⁴ Student reported that his history teacher scratched and bruised his hands and neck, threw a book at him, and cursed at him in German, which he recognized because he lived in Germany for five years. He testified that while in class, the teacher grabbed his hands when he was not writing properly, and the teacher used her fingernails to scratch the top of his hands. Student stated another boy in his class was also mistreated by the teacher. Student reported such misconduct to family members in the Fall of 2016, but he only reported to Ms. about the name calling, cursing and book throwing. Student's disability at times made the description of events more difficult for him to express. The teacher adamantly denied the allegations, and Principal Waters denied having received any prior complaints regarding such conduct about the teacher from any student. We find below that these allegations, if true, would not have affected Student's ability to receive FAPE, as they occurred before his IEP was implemented. However, a full investigation to achieve a broader fact finding conclusion should be conducted by the proper entity responsible for investigating allegations of teacher misconduct.

111. Ms. then asked if they would stop talking while she reviewed the file, and they did.

112. Ms. was provided copies of documents she requested from the file.

Conclusions of Law

This Commission has jurisdiction over matters relating to the identification, evaluation, placement, or the provision of FAPE to students with disabilities. Section 162.961.²⁵ The burden of proof in an administrative hearing is on the party seeking relief, which in this case is Parents. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). One of our tasks is to determine the credibility of witnesses. *J.L. v. Francis Howell R-3 School Dist.*, 693 F. Supp.2d 1009, 1033 (E.D. Mo. 2010). Our findings of fact reflect our credibility determinations.

Under the IDEA, all children with disabilities are entitled to FAPE designed to meet their unique needs. 20 U.S.C. §1400(d)(1)(A) and 34 C.F.R. §300.1(a). Missouri's State Plan for Special Education (2016) (State Plan) generally defines FAPE as regular and specialized special education and related services provided at public expense, under public supervision and direction without charge to the parents that meet the educational standards of the state educational agency and are provided in conformity with the Student's IEP. State Plan, Regulation I, §, page 3.²⁶ The IDEA sets forth numerous procedural safeguards to protect parents and students' rights under the law, as we address some safeguards.

An IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District RE-1*, Supreme Court of the United States, 2017 WL 1066260 (March 22, 2017), Slip Opinion No. 15-827. Per

²⁵ Statutory references are to RSMo Cum. Supp. 2013 unless otherwise indicated.

²⁶ See also, 20 U.S.C. § 1401(9).

34 C.F.R. §300.321(a), the public agency must ensure that the IEP team for any student is composed of:

- the parents;
- at least one regular education teacher of the student, if applicable;
- at least one special education teacher provider of the child, if applicable;
- a representative of the local educational agency who is qualified in the provisions of special education to meet the unique needs of the student, who is knowledgeable about the general education curriculum and about the available of resources at the school;
- an individual who can interpret the instructional implication of evaluation results;
- at the discretion of the parent and agency any other individual who has knowledge or special expertise regarding the child or related services; and
- where appropriate, the student.²⁷

Per 34 CFR §300.324(a), the IEP is required to consider in relevant part:

- The strengths of the child;
- The concerns of the parents for enhancing the education of the child;
- The results of the initial evaluation or most recent evaluation of the child;
- The academic, developmental and functional needs of the child;
- The communication needs of the student; and
- Whether the child needs assistive technology devices and services.²⁸

It is well established that “[t]he IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Andrew F.*, Slip Opinion No. 15-827, p. 4, quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988). The IDEA vests school personnel with the “responsibility for

²⁷ See also 20 U.S.C. §1414(d)(1)(B).

²⁸ See also, 20 U.S.C. §1414(d)(3)(A) and (B).

decisions of critical importance to the life of a disabled child,” and “[t]he nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child’s IEP should pursue.” *Andrew F.*, Slip Opinion No. 15-827, p. 12.

Per 34 C.F.R. §300.503 and State Plan, Regulation V, §3, page 59, a school district is required, in part, to provide parents with written notice whenever it proposes to initiate, change, or refuse to initiate or change, the identification, evaluation, or educational placement of the student, or a FAPE provision early enough to ensure that the parents will have an opportunity to attend. Also, a local educational agency “must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.” 34 CFR § 300.322. This includes “notifying parents of the meeting early enough to ensure they will have an opportunity to attend and schedule the meeting at a mutually agreed on time and place.” State Plan, Regulation IV, §2, page 46.

Per 20 U.S.C. §1415(c)(1), the written notification to the parents shall contain:

- a description of the action proposed or refused by the district;
- an explanation of why the district proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action;
- a statement that the parent of a child with a disability have procedural safeguard protection as defined by the IDEA and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- sources for parents to contact to obtain assistance in understanding the provisions of applicable law;
- a description of other options considered by the IEP Team and the reason why those options were rejected; and
- a description of the factors that are relevant to the local education agency’s proposal or refusal.

The procedural safeguards set forth in IDEA “. . . emphasize collaboration among parents and educators and require careful consideration of the child’s individual circumstances” *Andrew F.*, Slip Opinion No. 15-827, p. 4, citing §1414. However, not every procedural violation amounts to a denial of FAPE. Whether a procedural violation amounts to a denial of FAPE depends on whether the violation impeded the child’s right to FAPE, significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provisions of FAPE to the student, or caused a deprivation of educational benefits. 34 C.F.R. §300.513(a)(2)(i)-(iii).

Issues in the Case

Parents’ due process complaint references a wide range of concerns that they have with the District.²⁹ Based on the prehearing conferences we held with the parties and their prehearing conference statements, we summarized three issues in this case:³⁰

1. Whether the School denied due process rights in the IEP process by:

- Failing to provide Parents and Student with a notice of rights and responsibilities;
- Denying Student’s participation in the IEP meeting processes;
- Failing to allow for meaningful participation by Parents and Student (including the allegations in the complaint regarding notes, harassment, intimidation, and whether the Security Resource Officer’s presence chilled or hindered Parent’s right for meaningful participation).

2. Whether Student was denied FAPE by failure to timely assess and evaluate Student for suspected disabilities, including obtaining outside evaluations, and whether Student had the need for assistive technologies in order to obtain FAPE.

²⁹ The IDEA imposes minimal pleading standards and only requires a party to set forth “a description of the nature of the problem” and “a proposed resolution of the problem to the extent known and available at the time.” §1415(b)(7)(A)(ii)(III) and (IV), *see also*, *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 55 (2005).

³⁰ Parents also plead in their complaint that the District was not providing an individualized education to Student, but instead comparing him to other students. While not identified as an issue in our prehearing conference, we do address it below and find Parents did not meet their burden of proof on this issue.

3. Whether the School denied FAPE to Student due to an alleged failure to assess, investigate, and evaluate concerns that Student experienced bullying, name calling, throwing objects, cussing on numerous dates either directed at Student or other students in the classroom by a teacher and/or school personnel even though the information was brought to the attention of school officials.

We address each issue below, but first we address evidentiary issues made at hearing that were taken with the case.

Evidentiary Issues

The District objected to the admission of Student's prior reports and assessments, Exhibits 1 through 5, provided by Ms. to Gambill as hearsay, and that they lacked foundation, and were not the best evidence. Ms. testified to providing these documents to Gambill, and he generally admitted to receiving them. The District's objection to hearsay is overruled to the extent the reports were offered to show notice to the District of what potential disabilities Student may have possessed, as opposed to being offered to establish that in fact Student suffered from such disabilities noted in the reports. The District's objections to lack of foundation and best evidence are overruled pursuant to §536.070 (9) and (10). Section 536.070(9) states that evidence offered without proof of the original may be admissible "if it shall appear by testimony or otherwise that the copy offered is a true copy of the original ..." In administrative proceedings, the business records exception is found in § 536.070(10), which states:

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence or event, shall be admissible as evidence of the act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of such evidence, but such showing shall not affect its

admissibility. The term “business” shall include business, profession, occupation and calling of every kind.

In addition, the document's custodian or preparer does not necessarily need to be present to sponsor the document. *See, Clear v. Coordinating Bd. for Higher Educ.*, 23 S.W.3d 896, 901 (Mo. App., E.D. 2000); *State ex rel. Sure-Way Transp., Inc. v. Div. of Transp.*, 836 S.W.2d 23, 26-27 (Mo. App., W.D. 1992); *Associated Wholesale Grocers v. Moncrief*, 955 S.W.2d 37, 38-39 (Mo. App., S.D. 1997) ; *Williamsburg Truck Plaza v. Muri*, 882 S.W.2d 346, 349 (Mo. App., W.D. 1994).

The District also objected to the following exhibits due to hearsay, lack of foundation, and best evidence: 1) Dr. Katz’s report, Ex. 6; 2) Parent’s cell phone records, Ex. 27; and 3) Student’s school records, Ex. 7. We conclude these exhibits are sufficiently reliable to support the conclusions drawn from them, and are exempt from the objections of hearsay, best evidence, and lack foundation pursuant to §536.070(9), (10) and (11). We overrule the District’s objections.

The District also objected to the testimony of Towns as not relevant to the extent she testified regarding the implementation of Student’s IEP. We overrule the District’s objection.

Parents sought to have evidence admitted into the record after the hearing had concluded and all evidence was deemed admitted. We find such evidence inadmissible.

Notice of Rights

Parents allege in their due process complaint that Student was denied FAPE because they never received a copy of their rights and responsibilities as required by the IDEA. Parents did not further explain what they meant by “their rights and responsibilities,” so we interpret it to mean the IDEA procedural safeguards notice. Pursuant to the State Plan and 34 C.F.R. §300.504(a), a copy of the procedural safeguards shall be given to the parents only one time a

year, except that a copy also shall be given to the parents upon: a) initial referral or parental request for an evaluation; b) the first occurrence of filing a due process complaint; c) upon disciplinary changes of placement; or d) upon request of a parent. State Plan, Regulation V, §4, page 60, see also, 20 U.S.C. §1415(d)(1)(A).

The evidence supports the District's argument that Ms. was provided a copy of the procedural safeguards on August 9, 201, by Gambill. Further, Ms. was reminded of where she could obtain a copy of such rights in the written notifications she received from the school. There is no evidence that Parents requested a copy of the procedural safeguards from school personnel, or that Student was denied FAPE based upon Parents' lack of knowledge regarding their legal rights. Accordingly, we must conclude that Parents failed in their burden of proof that they did not receive a procedural safeguards notice, which applies to *pro se* parties as well as those represented by counsel. *See State v. Chambers*, 481 S.W.3d 1, 7 (Mo. banc 2016) (pro se parties held to same standards as attorneys).

Initial Evaluation of Student

In their due process complaint, Parents alleged that student was denied FAPE because his initial evaluation was not timely performed due to: 1) the testing not being completed within 60 days; 2) testing being prolonged by the District's use of stall tactics; 3) the District failed to consider Student's prior assessments; 4) in November 2016, Ms. reiterated the need for Student to be tested for APD and be administered a nonverbal IQ test, and Ms. had to have Student assessed on her own for APD; 5) a SLP did not attend the November 15, 2016 IEP meeting despite Ms. 's efforts to inform the District as to Student's communication disabilities; and 6) the District waited too long to have her sign the consent for initial evaluation form on October 4, 2017.

Once a child is identified as potentially having a disability, a school district is required to “conduct a full and individual evaluation” to determine whether the student has a disability, and, if so, what are the student’s educational needs. 20 U.S.C. §§ 1414(a)(1)(A) and (a)(1)(C)(i)(II). According to the IDEA, the initial evaluation shall be completed within 60 days of the school receiving a parental consent for the evaluation or as stated in the State Plan, and a variety of assessment tools must be used to assess the child in all areas of suspected disability. 20 U.S.C. §§1414(a)(1)(C)(i)(I), (b)(2)(A) and (b)(3)(B).

Missouri’s State Plan provides additional requirements. It states that a local educational agency:

. . . shall provide the parent with a Notice of Intent to evaluate as soon as possible, but within thirty (30) calendar days of the date of referral for evaluation. Delays beyond this time may be permitted for just cause (school breaks for summer or holidays, student illness, etc.) and documented in the student record.

The evaluation shall be completed and a decision regarding eligibility rendered within sixty (60) days following parent consent or notice, as the case may be.

State Plan, Regulation III, §3, page 31. Thereafter, an IEP meeting shall be scheduled to develop the IEP within thirty days, and the IEP services made available to the student as soon as possible.

State Plan, Regulation IV, §2, page 47.

On August 8, 2016, Ms. made her initial request to have Student evaluated for special education services. Per the State Plan, the District had thirty days to send Ms. a notice of intent to evaluate. On or about September 30, 2016, the District personally presented to Ms. a Notice of Action seeking consent to conduct an initial evaluation of Student. Ms. signed the consent on October 4, 2016, which was 57 calendar days after Ms. made the initial referral. This was outside the time frame prescribed by the State Plan. While the failed hearing test did cause some delays, it did not result in an additional 27-day delay.

Further, Student's evaluation was not timely completed per the requisite time frames in the State Plan, but there was good cause for some of the delay in the evaluation as discussed below.

The District held an IEP meeting to determine eligibility and complete an IEP on November 15, 2016, which was 21 days within the prescribed timeline of the State Plan. At the meeting, Ms. agreed to the initial IEP and Student began receiving services shortly thereafter. The IEP meeting exceeded the time frame established in the State Plan.

At the November 15, 2016 IEP meeting, Ms. was not entirely satisfied with the IEP by which she consented to services for her son. She sought to have Student administered a nonverbal IQ test, which the District agreed to do, and she informed the school that she was having her son evaluated for APD. There is no evidence that before this meeting Ms. made a verbal or written request that Student be given a nonverbal IQ or be evaluated for APD by the District. The attendees at the meeting agreed with the additional testing and that the IEP would be amended if necessary.

The fact that the District did not administer a nonverbal IQ test or evaluate Student for APD before the November 15, 2016 IEP meeting was not unreasonable in light of the fact that Student was verbal and Cooke's assessment of Student did not highlight the need for him to be tested for APD.

Ms. argues that the District should have conducted these additional tests on its own based upon the information she provided at the beginning of the school year. The evidence supports that these assessments and reports were too old to be reliable. While the reports put the District on notice of potential disabilities, this alone does not establish that the District should have acted differently in its assessment of Student before the November 15, 2016 IEP meeting. Fortunately, Ms. insisted on the school administering a nonverbal IQ test and scheduled her son to be evaluated for APD as she knew the capabilities of her son. The IDEA ensures

parental participation for this reason. Ms. was correct in having her son tested for APD and requesting a nonverbal IQ test; but this does not mean that the District violated Student's rights by not administering these tests based on the evidence before the November 15, 2016 meeting. Furthermore, the evidence does not provide that Ms. requested a nonverbal IQ test or that Student be tested for APD in the initial review of data on September 30, 2016. Also, Ms. consented on October 4, 2016, to Student being administered the WISC-V – a verbal test – which again did not raise the issue that Student should be administered a nonverbal IQ test. The school agreed to administer the nonverbal IQ test upon Ms. 's request, and the evidence does not support that Ms. ever asked the District to assess Student for APD before she informed the school that she had already scheduled an assessment with Dr. Katz.

Because Ms. on her own had Student tested for APD by Dr. Katz, the District had to rely upon the receipt of this report to move forward with amending the IEP. The District received the report on January 4, 2016, and an IEP meeting was scheduled within a reasonable amount of time on January 17, 2016.³¹ The District went to the meeting prepared to recommend an additional 40 minutes per week of language therapy for Student. The IEP meeting did not occur for other reasons as we discuss below. The District was not prepared to finalize its initial evaluation of Student until January 12, 2017, which was outside the 120-day time period provided by the State Plan, but the timing was not entirely within its control, as it was waiting on Dr. Katz's evaluation from Ms. .

However, there was no valid reason not to administer Student the nonverbal IQ test until January 12, 2017. The District states it was waiting on administering the test until it received Dr.

³¹ Nothing in §1414(d)(4)(A)(ii) or in subsection (c)(1)(B), specifically requires a school district to immediately convene an IEP meeting as soon as it discovers new information. See *Taylor P. ex rel. Chris P. v. Missouri Dept. of Elementary and Secondary Education*, 2007 WL 2907825 at *31 (W.D. Mo. 2007).

Katz's report. The evidence does not support a need to wait. Further, once Cooke was made aware of the nonverbal IQ test scores, she concluded that Student was eligible for language services. It would have been reasonable for the District to have administered the nonverbal IQ test on or before November 23, 2016, as it took them eight days after receiving Dr. Katz's report to administer the test. If this had been done, Student would have been eligible on or about November 23, 2016.

Accordingly, we find the District denied FAPE to Student when it waited until January 12, 2017, to administer the nonverbal IQ test. However, we do not find that Student was denied FAPE or that Parents were denied an opportunity to participate in the decision-making process due to the District's delay in providing Ms. the consent to evaluate form in a timely manner. This is because Student began receiving special education services more quickly than required by the State Plan timeline, except for language therapy services, which we address separately. Also, we find the District did not violate Parents' or Student's procedural due process rights to the degree required by law when it did not assess Student for APD. The District did not fail to properly consider Student's prior reports and assessment, and it did not use stall tactics to delay Student's evaluation.

With regard to Cooke not attending the November 15, 2016 IEP meeting, we do not find the District violated Student's or Parents' procedural due process rights. While her presence at the meeting may have been beneficial, the IDEA did not require it.

Parents also argue that Student was not properly evaluated for dyslexia. Student was found eligible for special education services per the Specific Learning Disability as defined in the State Plan. The definition includes the category of dyslexia. The evidence does not support a finding that Student was not evaluated for dyslexia by the District.

Parents and Student Participation in IEP Process

Parents assert several procedural due process violations in their due process complaint regarding their lack of participation in the IEP process. The due process complaint generally alleges that Parents and Student were not allowed to participate in the development of Student's IEP because: 1) they were not provided adequate notice of IEP meetings; 2) the school did not take notes or record any of the IEP meetings; 3) Student was not in attendance at the January IEP meeting; and 4) they were never a part of the IEP meetings as the spirit of the IDEA was intended due to harassment and intimidation.

First, Parents allege that they were not provided adequate notice of the September 30, 2016 review meeting, the November 15, 2016 IEP meeting, and the January 17, 2017 IEP meeting. The District originally mailed a notification of meeting to Ms. and Student on September 15, 2016, for the meeting on October 3, 2016. This meeting was rescheduled per Ms. 's request to September 30, 2016, and she learned of the change that same morning. While an inconvenience to her, she was able to attend and she did not ask that the meeting be rescheduled to allow her more time to prepare. There is no evidence that the short notice caused Ms. to not be able to fully participate in the meetings and express her positions on matters affecting her son. Ms. knew on or about September 15, 2016, that the District was trying to schedule this meeting, and the District rescheduled it per Ms. 's request.

On November 4, 2016, the District mailed Ms. and Student a written notification of an IEP meeting scheduled for November 15, 2016. Ms. did not receive a written notification of the meeting. Again, she learned of the meeting that same morning, but was able to attend and fully participate. The lack of Ms. and Student's participation in the scheduled IEP meeting for January 17, 2017, was not due to a lack of notice.

The District is required to take steps to ensure that Ms. and Student are present at an IEP meeting or are otherwise afforded the opportunity to participate, and this includes notifying them of meetings “early enough to ensure they will have an opportunity to attend and schedule the meeting at a mutually agreed on time and place.” 34 C.F.R. §300.322 and State Plan, Regulation IV, §2, page 46. The District did send out notifications and attempt to work with Ms. to reschedule two of the above meetings per her request. The rescheduled meetings resulted in short notices to Ms. , but she was able to modify her schedule and attend. The weight of the evidence does not support a conclusion that Student was denied FAPE due to any procedural violation of the notice requirement alone or that Ms. ’s opportunity to participate in the decision making process was significantly impeded. We do not find that Parents received notice of a meeting solely by the District informing Student to tell his mother about an upcoming meeting, which would have been inappropriate.

Second, parents allege that the school did not take notes or record the IEP meetings. We are aware of no legal requirement that notes be taken during an IEP meeting. Further, Parents did not establish by a preponderance of the evidence that notes were not taken, or that such an alleged occurrence interfered with Student receiving FAPE or Parents’ ability to participate in the decision making process. Also, Parents claim they were not allowed to tape record the January 17, 2017 meeting, but the meeting never occurred resulting in any substantive discussion of Student’s IEP based upon Ms. not being allowed to tape record the meeting.

Third, Parents allege that Student was not in attendance at the January 17, 2017, IEP meeting. Student was invited and received notice of the meeting. Student was not present at the meeting, as no one from the school asked him to leave his special education classroom and join the meeting. Federal regulation 34 C.F.R. §300.321 does state that the District must ensure that the IEP team is composed of the required personnel. Further, Ms. did not request that

Student be asked to join the meeting. The IEP meeting did not occur as it was cut short for other reasons, which we address below. Student was not denied FAPE due to the fact that he did not attend the meeting because no substantive conversation occurred regarding his education to which he should have been allowed to contribute.

Fourth, Parents allege they were never a part of the IEP meetings as the spirit of the IDEA was intended due to harassment and intimidation, which more specifically entailed: a) having the school resource officer being called in on a meeting between Gambill and Ms. on January 4, 2017; b) not being allowed to tape the January 17, 2017 IEP meeting; and c) having the school resource officer sit next to Ms. at the meeting without Ms. having received prior notice that the officer would be present.

The evidence supports a finding that Ms. was assertive in her requests to the school regarding her son, and that she raised her voice and pointed her finger at Gambill on January 4, 2016. It was likely reasonable for the school custodian to call the school resource officer when she observed Ms. engaging in such behavior across an office counter in a school setting. School personnel are generally sensitive to displays of confrontation in school, but this sensitivity is not the standard by which to determine whether a police officer should be called into an IEP meeting and seated immediately next to Ms. without advanced notice. Waters and Gambill testified that their previous interactions with Ms. were the reasons the school resource officer was asked to attend the meeting. They did not have a fear of further escalation of behavior by Ms. .

Moreover, on January 4, 2016, Ms. was under the impression, albeit perhaps incorrectly, that Gambill was not going to schedule a follow-up IEP meeting, which resulted in

much frustration for Ms. .³² Also, Ms. raised her voice and pointed her finger at Principal Waters when she felt like she was being reprimanded for not signing in when he had previously told her she did not have to sign in.

Assertive parental advocacy should be expected under the IDEA in that the laws encourage parents to advocate and fully air their respective opinions. The IDEA protects parental involvement in determining what special education services are to be administered to their children.

The District overutilized the school resource officer to the detriment of Student when it invited the officer to the January 17, 2017 IEP meeting without notice to Ms. or Student. It was reasonable for Ms. to question the presence of the officer and have concerns that Student's confidential information would be discussed in the officer's presence without her consent to release information as stated in the notification of meeting. The presence of the officer and superintendent significantly impeded Ms. 's opportunity to participate in the decision making process, and it required her to cancel the meeting even with the fact that she wanted to record the meeting. This resulted in Student's IEP not being revised on January 17, 2017, wherein he would have had a right to participate.

Student has been denied educational benefits in the form of language therapy that he should have received beginning November 23, 2016, or shortly thereafter as time would have been needed to schedule another IEP meeting due to the nonverbal IQ test not being timely administered, due to the presence of a police officer and the Superintendent at the scheduled IEP meeting and because Parents did not receive notice that such individuals would be attending the

³² Gambill testified that he did not make such a statement. We do not find that such contradictory testimony was due to one person not being credible. Instead, it is likely due to a misunderstanding or incomplete understanding as to what each party said at the time.

meeting. Student should be reimbursed by the District for such services in the form of compensatory services as addressed below.

School Records

Ms. argues in her legal brief that she was denied access to all of Student's educational records. Such claim has not been properly pled or raised in this case. We do note that per 20 U.S.C. §1415(b), a school district must provide parents of a child with a disability the opportunity to examine all records relating to such child. The District supplied records to Ms. that it claims were complete. Ms. insists that there must be additional records, but it remains inconclusive whether Ms. did not receive or was not presented for inspection all requested records.

Our order of February 17, 2017, stated that Ms. be allowed to quietly review Student's educational records. While Ms. was allowed to review the records and the individuals stopped talking when she asked them to, this was not an ideal situation by which to review a student's records. Accordingly, Parents need to be allowed to review Student's education records that are gathered into one location in a quiet room away from everyday noise in a school building that is generated in a school location open to visitors and students.

IEP Content and Implementation/ IEP Non Sufficient

Parents allege in their due process complaint that the District is not providing Student an individualized education, but instead is comparing him to other children. Student's special education teacher testified differently and stated how Student's level of work was comparable to his individual abilities. Parents have not met their burden of proof that the District has failed to implement a substantial or significant provision of Student's IEP by comparing him to other students. See *Neosho R-V School District v. Clark*, 315 F.3d 1022, fn 3 (8th Cir. 2003), citing

Houston Ind. Sch. Dist. v. Bobby R., 200 F.3d 341, 349 (5th Cir.2000) (“setting forth the analysis that a party who is challenging the implementation of an IEP must demonstrate that the school authorities failed to implement a substantial or significant provision of the IEP; and noting that this analysis affords schools some flexibility in implementing IEPs but still holds them accountable for material failures and for providing a meaningful educational benefit”).

Bullying

One of the issues in this case is whether Student was denied FAPE due to the District’s failure to assess, investigate, or evaluate concerns that Student experienced bullying, name calling, objects thrown at him, and cursing on numerous occasions by a teacher or other student. More specifically, Parents claim in their due process complaint that Student was denied FAPE due to: 1) bullying by teacher and Principal; 2) when Ms. told Principal about a teacher bullying Student, the Principal stated that Student needed to get used to the teacher; 3) when Ms. informed a school board member about bullying by a teacher, Student was moved from the class the next day and Student lost 0.5 credit due to the move.

Missouri has defined “bullying” in a law requiring school districts to adopt an antibullying policy in § 160.775.2 as:

“Bullying” means intimidation or harassment that causes a reasonable student to fear for his or her physical safety or property. Bullying may consist of physical actions, including gestures, or oral, cyberbullying, electronics, or written communication, and any threat of retaliation for reporting of such acts.

The evidence supports that Ms. and Student reported Student’s statements of bullying to the District before the November 15, 2016 IEP meeting. No evidence was offered from Student or Parents as to how or the degree to which such action did or may have impaired Student’s education or that it continued into his special education courses. Such testimony does go to the overall level of frustration that Ms. and Student experienced with the school.

Parents did not meet their burden of proof that any bullying Student may have experienced violated Parents' or Student's rights as it pertains to IDEA which is the subject by which we have jurisdiction over this case or that Student lost a 0.5 credit hour.³³

Remedies

Parents stated in their due process complaint that they were seeking the District: 1) pay for Student to receive 1200 hours of tutoring from an outside source of Parents' choosing which would include auditory services and reading and math services with travel expenses to be included; 2) provide 200 hours of speech/language services using the prompt method to help with Student's receptive and expressive language and his oral speech (oral motor dysfunction); 3) pay one million dollars per person for harassment and intimidation and emotional distress or the right to sue outside the due process hearing for harassment and intimidation and emotional distress; 4) pay for assistive technology to benefit Student (a hearing aid type of equipment); and 5) Student be assessed for several learning disabilities.

With regard to Parents' request that Student receive tutoring from an outside source, we do not find the evidence supports such a request. Federal district courts appear to disagree as to the extent parental hostility toward a school district can affect the placement of a student. For example, in *Greenbush Sch. Comm.*, the court held that an "extremely adversarial relationship" between parents and a school district can condemn the student "to an unsatisfactory education unless he was placed in a school other than the school designated by his IEP." *Greenbush Sch. Comm. v. Mr. and Mrs. K*, 949 F.Supp. 934, 941 (D.Me. 1996), citing *Board of Education of Community Consolidated School District*, 938 F.2d 712, 714- 716 (7th Cir. 1991); *see also*, *College Station Independent School District*, 1 ECLPR 239 (Sea Tx 1992)(court refused to allow

³³ For a general discussion of bullying, *see T.K. v. New York City Dep't of Educ.*, 779 F. Supp.2d 289 (E.D.N.Y. 2011).

parent hostility to dictate or modify what is otherwise an appropriation program under IDEA). Nevertheless, Parents have not met their burden of proof that Student is entitled to tutoring from an outside source, or that the relationship between them and the District will affect Student's ability to receive FAPE going forward as to require further analysis on this issue.

Also, we deny Parents' request for monetary damages because such damages are not available under IDEA in the Eight Circuit. *Heidemann v. Roth*, 84 F.3d 1021, 1033 (8th Cir. 1996); *Bradley v. Arkansas Dept. of Educ.*, 301 F.3d 952, 957 (8th Cir. 2002). Parents failed to present evidence that supports their claim that Student is entitled to assistive technology or that he requires further assessment for additional disabilities. Dr. Katz's report did state that an assistive listening device should be considered. However, this evidence alone does not meet a preponderance of the evidence standard required to grant an order for assistive technology.

We do find that Student is entitled to compensatory language therapy services of 40 minutes per week for the period of time he should have received such services under the law. The language services shall have goals as recommended by Cooke and set forth in the District's draft IEP, Ex. R, at the District's cost. Such services shall be administered to Student before the first day of the 2017-2018 school year in a manner reasonably directed by the District. However, the services are to be provided on a schedule mutually agreeable to the parties. The parties may mutually agree to extend the completion of the delivery of the compensatory services after the start of the 2017-2018 school year if required in the best interest of the Student.

The time period Student should have received language therapy services covers a 22-week period from December 1, 2017 (a reasonable time for the District to have revised the IEP to include language services after the nonverbal IQ test should have been administered to Student) until May 10, 2017 (the date by which the IEP shall be revised as stated below minus one week to account for spring break). This amounts to 880 minutes of compensatory services owed to

Student. Further, an IEP meeting shall be scheduled by the District as soon as possible, but in no event later than two weeks from the date of this order. The meeting shall be to review/revise Student's IEP to cover the language therapy services discussed above. In no event shall it take longer than May 10, 2017, to amend the IEP to include such services, unless the parties mutually agree on a later date.

Parents shall be allowed to review a full set of Student's educational records in a quiet room away from students and outside conversations to plan for the upcoming IEP meeting. The District shall also provide Parents with notice of the upcoming IEP meeting via e-mail, in addition to U.S. mail, so as to ensure they receive timely notice.

Summary

We deny Parents' due process complaint on all grounds except for their claims that the District denied Student FAPE by delaying administering a nonverbal IQ test to Student, inviting a police officer and the Superintendent to a scheduled IEP meeting, and not providing notice of their attendance to Parents. We order the District to provide such services as stated above to ensure Student receives FAPE as required by law

SO ORDERED on April 4, 2017.

RENEE T. SLUSHER
Commissioner

Appeal Procedure

Please take notice that this is a final decision of the Administrative Hearing Commission and you have a right to request review of this decision. Per §162.962, when a review of this decision is sought, either party may appeal as follows:

(1) The court shall hear the case without a jury and shall:

(a) Receive the records of the administrative proceedings;

(b) Hear additional evidence at the request of a party; and

(c) Grant the relief that the court determines to be appropriate, basing its decision on the preponderance of the evidence;

(2) Appeals may be taken from the judgment of the court as in other civil cases;

(3) Judicial review of the administrative hearing commission's decision may be instituted by filing a petition in a state or federal court of competent jurisdiction. Appeals to state court shall be filed within forty-five days after the receipt of the notice of the agency's final decision;

(4) Except when provided otherwise within this chapter or Part 300 of Title 34 of the Code of Federal Regulations, the provisions of chapter 536 are applicable to special education due process hearings and appeal of same;

(5) When a commissioner renders a final decision, such decision shall not be amended or modified by the commissioner or administrative hearing commission.

The right to appeal is also addressed in 34 C.F.R. §300.516.