

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENTS	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
KLEIN INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner, *** (“Student”), b/n/f *** and *** (“Parent”), filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”) on January 10, 2013. The Respondent in the complaint is Klein Independent School District (“District” or “KISD”). At all times, Yvonnilda Muniz, attorney, represented Petitioner. She was assisted by Dorene Philpot, attorney. Respondent was represented by Amy Tucker, attorney.

Issues for Hearing and Requested Relief

The issues brought forth by Petitioner in its Request for Special Education Due Process Hearing and Required Notice are as follows:

1. Whether District failed to place Student in the least restrictive environment (“LRE”) of a general education setting and/or resource setting;
2. Whether District failed to evaluate Student in all areas of suspected disabilities;
3. Whether District failed to provide appropriate supplementary aids and services, including but not limited to accommodations and modifications to address Student’s visual impairment (“VI”) in order to allow Student to be educated in the LRE;
4. Whether District failed to train Student’ teachers on student’s disabilities, including VI;
5. Whether District failed to provide Student with appropriate assistive technology (“AT”) support;
6. Whether District failed to provide Student with appropriate VI services;
7. Whether District failed to provide Student’s teachers with appropriate VI services;
8. Whether District failed to appropriately evaluate Student taking into account student’s VI;

9. Whether District changed Student's educational placement at the end of the 2011-2012 school year without an appropriate evaluation to support such change;
10. Should Student be determined eligible as a student with autism, whether District provided required educational services under the autism supplement during the 2011-2012 school year to date; and
11. Whether the District failed to provide a free, appropriate public education ("FAPE") to Student.

As relief, Petitioner requests the following:

1. An order directing the District to provide FAPE in the LRE to Student;
2. An order directing a full and individual independent educational evaluation in all areas of suspected disabilities;
3. An order directing District to provide compensatory educational service in core academic areas, including but not limited to one-to-one tutoring with a certified teacher;
4. An order directing District to reimburse Petitioner's Parent for expenses spent for one-to-one private tutoring;
5. An order directing District to reimburse Petitioner's Parent for all private therapies provided to Student;
6. An order directing District to evaluate Student's visual deficits for the purpose of addressing appropriate accommodations and modifications including, but not limited to AT;
7. An order directing District to consult with the Texas School for the Blind and Visually Impaired;
8. An order directing District to conduct a full comprehensive visual evaluation;
9. An order directing District to provide Student's teachers with a consultant trained in the needs of students with VI;
10. An order directing District to provide parent training, including attendance at a state level conference, including payment for registration, lodging and transportation costs;
11. An order directing District to pay for enrollment and attendance at a private school that meets Student's needs;
12. An order directing District to provide transportation to and from the private school;
13. Alternatively, an order directing District to remove Student from the self-contained setting and placement in student LRE-general education setting;
14. An order directing District to provide a trained one-on-one aide to provide educational support to Student in the general education setting;
15. An order directing District to provide training to its staff regarding Student's VI;

16. A finding that District denied Student a FAPE; and
17. Any other compensation the Hearing Officer sees fit to award.

Procedural History

The parties participated in an unsuccessful Resolution Session on February 8, 2013. After continuances for good cause, the parties convened for the due process hearing on May 16, 17, and 28, 2013. Due to unavoidably delayed transmission of a transcript of the proceedings, the parties requested an extension of time for filing closing arguments and an extension of the decision due date. On June 26, 2013, an order granting the request for extensions was entered. The decision due date was extended to July 19, 2013. The parties filed closing briefs on June 28, 2013.

Stipulations of Fact

At the outset of the due process hearing, the parties filed the following joint stipulations:

1. At the time of the hearing, Student was a ***-year old student enrolled in *** grade at *** School in Klein ISD. Student qualifies for special education and related services under the IDEA. Student's special education eligibilities include: other health impaired ("OHI"), orthopedically impaired ("OI"), VI, and speech impaired ("SI").
2. In *** grade, Student was placed in a special education resource setting for Math, English/Language Arts ("E/LA"), and Reading. Student received support assistance in the general education classroom for Science and Social Studies, and also participated in regular education electives. Student received instruction in a modified curriculum with goals and objectives in all core academic areas in addition to goals/objectives in Behavior/ Social Skills, Counseling, and Compensatory/ Study Skills. Student received related/other services including vision services, occupational therapy, behavior intervention plan ("BIP"), counseling, school health services, adaptive P.E., and personal care services along with numerous classroom accommodations related to Student's vision and other needs.
3. Student's placement for *** grade was originally discussed at the annual admission, review, and dismissal ("ARD") meeting on January 30, 2012. The ARD was continued on February 10, 2012, and again on February 24, 2012. KISD recommended placement in a special education Reaching For Success class ("RFS") for all core academic subjects as well as social skills. Parent did not agree with the placement, and requested additional assessments to obtain more information before making a placement determination. KISD agreed.
4. KISD completed the following:
 - a. Functional Vision Evaluation dated April 5, 2012

- b. Re-Evaluation for Occupational and Physical Therapy dated April 12, 2012
 - c. Functional Behavioral Assessment dated April 17, 2012
 - d. AT evaluation dated April 20, 2012
 - e. Speech and Language evaluation dated April 25, 2012
 - f. Adaptive P.E. screening dated March 20, 2012
5. At Parent's request, KISD paid for an independent educational evaluation ("IEE") by Dr. *** that was completed on May 6, 2012. Dr. *** reported her findings in a meeting between school personnel, Parent, and the Parent's advocate prior to the next ARD meeting.
 6. An ARD meeting was conducted on May 30, 2012 to review the new assessments. The ARD committee, including Parent, agreed with the recommendations of the Speech Language Assessment that concluded Student was eligible as a student with SI on the basis of pragmatics deficits. As suggested by Dr. *** report, Klein ISD requested Parent's consent to conduct a psychological evaluation to consider whether Student was a student with an Autism Spectrum Disorder. Parent provided consent for Klein ISD to complete the psychological evaluation on May 30, 2012. The school-based members of the ARD committee again recommended the RFS program for core academics and social skills for Student's *** grade year. The Parent disagreed, and the ARD meeting ended in non-consensus.
 7. On July 23, 2012, the Parent revoked consent for the psychological evaluation.
 8. The ARD committee re-convened on August 29, 2012 to discuss placement. Outside of the ARD meeting, Parent indicated to KISD staff that she had obtained a private psychological evaluation on July 17, 2012, from ***. However, the parent advocate refused to provide a copy for the ARD committee stating, "It violated HIPAA." The meeting ended in agreement with a proposed placement of RFS for E/LA, Science, Social Studies and Social Skills, a special education resource Reading and Math, and a general education elective (***). Student would receive instruction in a modified curriculum with goals and objectives for Reading, Language Arts, Mathematics, Science, Social Studies, Behavior/ Social Skills, Counseling, and Compensatory/ Study Skills. Related/Other services agreed to included speech therapy, vision services, BIP, counseling, school health services, and occupational therapy ("OT"). According the Schedule of Services page, Speech therapy was to be provided at "30 minutes per grading period collaboration with special education providers." OT was to be provided in "4/30 minute sessions for the 1st 6-week grading period of the 2012-2013 school year." In addition, "two 30 minutes session, for each of the remaining 6 week grading periods during the 2012-13 school year." OT time could include "direct

services to an individual or group, consultation with staff/parent, management of assistive technology/adaptive equipment, development and input into progress on IEP, and collaboration for transition.” Counseling sessions were to be provided in “2- 30 min sessions/month (except Dec-1 session), for a total of 17 sessions per year.” During off weeks, the counselor was to provide consultation to teachers to promote generalization of skills. Student was to receive 60 minutes of Vision Services per month. Student also received numerous classroom accommodations related to Student’s vision and other needs. The ARD committee agreed to meet again to review the placement on October 3, 2012. Later that day, the parent advocate sent an email to the School indicating the parent was revoking her agreement with the ARD committee’s placement recommendation. District staff met with Parent informally and the parties agreed to implement the proposed program and reconvene the ARD meeting in October.

9. At Parent request, the review ARD meeting, originally scheduled for October 3, 2012, was postponed until November 8, 2012. The review was convened on November 8, 2012, tabled and continued on November 27, 2012, and again tabled and continued on December 7, 2012. At the November 8, 2012 ARD meeting, KISD proposed that Student receive RFS in all academic areas including a Social Skills class within RFS and a general education elective. At the December 7, 2012 ARD re-convened meeting, KISD proposed that Student receive reading instruction in the RFS classroom instead of the special education resource classroom, but that Student continue to receive resource math and general education inclusion time for an elective and Science labs. Parent disagreed with the proposal, and the ARD ended in non-consensus.
10. A reconvened ARD was held on December 20, 2012, to discuss the appropriate placement for the remainder of the 2012-2013 school year. KISD again recommended RFS for Social Skills, Reading, Science, English, and Social Studies, a resource Math class, and regular education for an elective and Science labs. The same Related/Other services were also recommended including Speech Therapy, vision services, BIP, counseling, school health services, adaptive PE, and OT. Parent disagreed with the proposed placement. Parent requested the *** program. In response to Parent’s request, District agreed to have a Licensed Specialist in School Psychology observe Student and review student’s records. The ARD committee ended in disagreement and Parent was informed that the district would be implementing its proposed programming on January 11, 2013.
11. Parent filed a request for a due process hearing on January 9, 2013, and invoked stay-put as to Student’s placement.

12. An annual ARD for Student was conducted on January 29, 2013. KISD proposed to continue the same placement for the remainder of the 2012-2013 school year, and for the 2013-2014 school year, a placement in RFS for all academic areas and social skills with general education inclusion for Science labs and an elective. KISD recommended Related/Other services including Speech Therapy, VI services, BIP, counseling, school health services, and OT. Parent disagreed with the placement and other issues, and the ARD meeting ended in non-consensus.
13. The ARD committee was scheduled to reconvene on February 6, 2013 at 9:00 a.m. However, Parent informed the school at 10:39 p.m. the night before that she was unable to attend because her advocate had to tend to an out-of-town family emergency and requested the meeting be re-scheduled to February 12, 2013.

Based upon the evidence and argument of the parties, I make the following findings of fact and conclusions of law. Citations to the transcript are designated "T" with a notation of the page numbers. Citations to exhibits are designated as "P" for Petitioner's exhibits, "R" for Respondent's exhibits, and "J" for joint exhibits, each with a notation of the exhibit number.

Findings of Fact

1. Student experienced ***. Student is diagnosed with ***. Student's developmental milestones for motor skills were mildly to moderately delayed. Student spoke words by 3 ½ years and sentences by 4 years. Student's visual impairment creates limitations for student. Student sees a distance of ***. T:196-197; P-19
2. Student's strengths are in rote learning. Student's basic reading is in the average range. Student's weakness is in abstract thinking or processing information which impacts reading comprehension and math. Student's visual spatial and knowledge scores fall into the very low range. Student's fluid reasoning and working memory fall into the below average range and quantitative reasoning fall in the low average range. Student's ability to complete tasks targeting simple repetitive planning, organization, and self-monitoring of visuo-perceptual and visuo-spatial skills fall within the deficient range of functioning. This area correlates with basic math computation and reasoning skills and written and oral expression. Student demonstrates a very fast processing speed with high error rates. Student often responds before all information has been received. Student demonstrates difficulties with behavioral, attentional and cognitive shifting. Student has difficulty maintaining attention to tasks without constant redirection or prompting. If left to work independently, Student ***, or

- gazes around the room. T:89-90; 94; 121; 157-158; 180; 548-561; P-7; P-10; P-12; P-19; J-2; J-10
3. Student needs a social skills component in Student's education program along with a modified core curriculum. It is predicted that Student will need social skills instruction throughout student's public school years. Modified core curriculum is necessary when a child is exhibiting interaction with curriculum approximately two or more years behind its peers. T:621; 691-692
 4. Student exhibits behaviors that are similar to students with autism such as repetitive behavior, perseveration on certain topics, limited reciprocal social interactions, and issues surrounding sensory integration of Student's environment. T:518; P-19; P-24; J-10
 5. For academics, Student needs small, highly structured classes that provide opportunities for immediate feedback. Student needs a variety of strategies to support Student's needs that could include computer-aided instruction. Jt. 10; T:87
 6. Student is weak in reading comprehension. Strategies that are successful include asking Student to re-state and re-phrase, respond to comprehension questions regarding main ideas, sentence understanding and finding facts. Student requires repetition in order to respond correctly. T:174-175; 205-206
 7. In math, Student encounters difficulty with regrouping in subtraction through multiplication. Student has difficulty understanding and following through with required steps in solving math problems. T:175-176
 8. Student is sensitive to loud noises and ***. Student has a low threshold sensory processing pattern. This means that Student reacts to the environment with little sensory input; therefore, if there is much noise or movement in the classroom, Student is distracted and attention to task is impeded T:176-177; 496; J-15; J-8;
 9. Historically, Student made passing grades, including *** grade. P-2
 10. During Student's *** grade year at *** School, Student made progress on student's two counseling goals. The goals were to initiate and sustain social interactions and identify and practice appropriate conversational skills with similar aged peers. Student knew the steps and could recite them, but had issues with application of the steps. T:116-118
 11. In *** grade general education science, Student required intense one-on-one instruction, re-instruction, reinforcement of activities over a several-week period of time, spiraling back in, re-testing, re-doing of assignments, much reinforcement and one-on-one assistance. The teacher modified the modified curriculum. All quizzes, assessments, both district and campus-wide were modified to Student's standards. Assignments were much more

simplistic. Student required the assistance of either the science teacher or the paraprofessional all of the class time. Student was on a second grade level while in the *** grade general education science class. T:157-158

12. In *** grade, Student required constant prompting and redirection to stay focused. Student demonstrated *** in the general education class. When prompted, Student stopped momentarily, then *** again. Student required daily prompting to unpack the backpack, put things away and carry needed material while transitioning from class to class. One on one prompting to stay on task was required at all times. Student's academic progress and ability to retain information was demonstrated through poor performance on campus and district common assessments. Once Student was not engaged in a 1:1 activity, Student either ***, ***, or both. Student's attention span was estimated at approximately one minute for less desirable activities. The resource classroom teacher confirmed the same difficulties in the resource room. J-8
13. District conducted a functional behavior assessment ("FBA") in the spring of Student's 5th grade year. In a general education social studies class, Student was observed to be passively engaged 76% of the time, actively engaged 11% of the time, and off task 13% of the time. Off task behaviors included staring, twisting pencil, and *** and the teacher was verbally instructing the class. *** ceased once someone attempted to gain Student's attention by calling student's name, when physically given a worksheet, and when engaged in an activity. J-12
14. During the FBA, Student was observed in a resource classroom. Student was actively engaged 19% of the time, passively engaged 59% of the time, and off task 22% of the observation time. Student was able to remain on task more effectively when working 1:1 with support assistant or when allowed to read. When the teacher provided instruction to the entire class, Student displayed more difficulty remaining on task. J-12
15. In addition to having difficulty maintaining attention to task, the FBA reported that Student had difficulty maintaining an organized work area and belongings. J-12
16. In the spring of Student's *** grade year, Dr. *** conducted an IEE. She reported Student's listening comprehension as a *** grade equivalent, reading comprehension as a *** grade equivalent, and math problem solving as a *** grade equivalent. Student has difficulty with pace of instruction, staying on task and transition. Environment plays a significant part in Student's education. Student has difficulty focusing, even in a small class environment. Integration of information is one of Student's difficulties. Too much information at once is difficult for student. Dr. *** recommended a slower pace of instruction given in very

discrete steps, then time for Student to practice using the information in a small, quiet, structured environment that allows Student to do so. She indicated that middle school regular resource classrooms lack sufficient structure for Student. Dr. *** recommended that Student receive elective classes of non-academic content with same-aged peers. T: 535-574; 597; J-10

17. District conducted a functional vision evaluation (“FVE”) near the end of Student’s *** grade year. Student read on a *** reading level for comprehension and *** grade level for fluency. Student’s listening skills were poor. Student could immediately repeat what was heard but could not apply the information. Student did not relate to peers. Recommendations included preferential seating, use of low vision aids as needed, positioning of materials in a preferred position for optimal viewing, direct overhead light to avoid glare, 10-12-point font avoided for long passages and dark lined paper. J-13
18. At the end of Student’s *** grade year, the general education teacher reported that most of the time, Student didn’t understand what student read. Student’s resource teacher reported that Student knew multiplication facts because it was rote memory, but that Student could not do multistep problems. The teacher reported that Student’s grades were a reflection of the additional support received in addition to modifications. The resource teacher reported that she saw no interaction between Student and other students. The resource E/LA classroom had 17 students. Student’s private tutor reported that the larger the group, the more distractible the Student. She reported that Student works better when 1:1 instruction is given. J-5
19. In April, 2012, it was recommended that Student use a portable keyboard with word prediction software for generation of written work, as well as larger specific lined area for provision of responses and labeling maps, slant board as needed, and trial use of sensory equipment to assist with classroom performance. J-14
20. Student experiences difficulty and anxiety with transitioning between classes. T:517-518; J-5; J-8
21. During Student’s *** grade year, District staff began to discuss change of placement recommendations. At first, District discussed possible placement of Student in a developmental class. Some District staff expressed reservations about such placement since Student is not eligible for special education as a student with an intellectual disability. Further, staff was concerned because Student continued to be required to take STAAR-Modified. District staff then began to discuss RFS as a recommendation. P-3

22. At a May, 2012 ARD meeting, Parent received copies of the FBA and BIP prior to that meeting. At the meeting, the IEPs were reviewed and accepted although they were not attached to the ARD document. J-6
23. District's August, 2012 Notice of Refusal did not include a date on which the proposed placement in RFS was to begin. By email, District told Parent that it would move forward with the proposed schedule of RFS in social studies, social skills, English and science, continued placement in resource reading and math, and *** as an elective, with implementation to begin September 4, 2012. By email, Parent acknowledged the start date of Student's placement. J-5; P-4
24. Between January 30, 2012 and January 2013, with all modifications and a slower pace, Student mastered 3 of 4 math objectives in resource math class. Student's annual math goal was continued. Student mastered one compensatory and study skill objective, with the annual goal reported as "work in progress." In reading, language arts, science, social studies, and behavior and social skills, Student's progress was reported as "work in progress." J-22
25. During *** grade, Student received instruction in E/LA, Science, Social Studies and Social Skills in the RFS setting, Reading and Math in a regular resource setting, and *** as an elective in the general education setting. Student received instruction in a modified curriculum with goals and objectives for Reading, Language Arts, Mathematics, Science, Social Studies, Behavior/ Social Skills, Counseling, and Compensatory/ Study Skills. J-2, 3, 4, 5
26. In *** grade, Student had lunch with *** and *** grade students. Student participated in *** as the chosen elective. T:202
27. Student has the use of a magnifier and telescope to assist in schoolwork, but typically does not choose to use them. Student reads 12-point font size and prefers 14-point font for longer reading although Student holds a book at the same distance as for 12-point font. T:493; J-13; R-1
28. In ***grade, Student had the use of a laptop and desktop computer. Student prefers a regular computer because of the larger screen. The keyboard is easier to manipulate. Student prefers to write using pencil and paper. District's occupational therapist worked with the RFS teacher regarding when and how to use the word prediction program that is useful for Student due to weakness in the left hand. The computers have text-to-speech software, as well. T: 491-494; 509

29. The over-stimulation that Student experienced in larger classrooms where there were more distractions was reduced when Student was in RFS. Student's participation increased and frustration level decreased. T:498
30. *** to lessen distractible fluorescent lights that tend to flicker. After Parent pointed out Student's need for light, ***. Strategies used for Student were a visual schedule, simplified directions broken down into steps, extra time for processing, repeated instruction, ear plugs or head phones, and brief breaks to calm or relax. J-15; T:502-503
31. At the end of Student's *** grade year, Petitioner's VI expert, ***, conducted a VI evaluation. Results indicated that Student's oral expression skills are in the average range, level of knowledge is in the low average range, and academic skills are in the low range. Student's overall level of achievement, fluency with academic tasks and ability to apply academic skills are in the very low range. P-24
32. Due to Student's VI, some of Student's worksheets are more difficult to work than others. P-16; T:343-347
33. When needed, District's VI teachers worked with Student's teachers to modify Student's instructional materials. T:304; P-1
34. District's 2010 FIE evaluator was aware of Student's VI. *** and Dr. *** confirmed that District's FIE resulted in valid data. Scores obtained by District were comparable to scores of Dr. *** and ***. J-19; T:566.
35. Dr. ***, was the only evaluator to use a test normed on students with visual impairments. *** reached no conclusions that were inconsistent with Dr. *** conclusions. T: 222; 631
36. District's proposed placement for Student's *** grade is for instruction in the RFS setting for all academic subjects and social skills, with science labs, elective(s), and lunch in the general education setting. J-1
37. District's special education RFS program is designed to provide an educational setting for 1) students on the autism spectrum who are approximately 1-2 years below grade level; 2) students on the autism spectrum who are on grade level but their behavior significantly interferes with their progress in the general education setting; and 3) students who share many behavior characteristics with students on the autism spectrum and need small group instruction and social skills support to meet their IEP goals. The RFS program is one of District's tiers for students who have autism of a moderate nature or have symptoms similar to autistic students such as sensory, structure needs, pacing with regards to educational information that is provided to them; it has technology available specific to the needs of students who have some vocabulary delays. It is considered a resource classroom, not a

self-contained class. Depending on a child's needs and level of performance, he or she might go into resource settings, co-teach settings, or regular education. There are fewer children in the RFS than in the other resource classrooms. During the 2012-2013 school year, 25-30% of the children in Student's RFS were not identified as children on the autism spectrum. T:60-62; 278; P-17

38. District's special education resource classrooms are designed for children to receive instruction from a special educator based upon their IEPs in order to progress in the state curriculum. Children who are in District's resource classroom setting have a significant academic delay in some area, usually at least two years below what would normally be expected of their peers in grade level. There are no nondisabled children in resource classrooms. A typical resource classroom lacks the behavioral structure, materials and strategies to deal with sensory needs such as Student's. T:64; 92-94; P-17
39. *** is a District special education program for children on the autism spectrum who are near or above academic grade level. Developmental classrooms provide skills for independent living in a secure environment as well as academics. P-17
40. District develops special education programs based on a child's needs rather than eligibility label. T:71
41. District used data from multiple sources in developing Student's educational program. T:98

Discussion

Petitioner bears the burden to prove a denial of a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

Respondent must deliver appropriate services as necessary to provide a FAPE. The educational program must be meaningful, and reasonably calculated to produce progress as opposed to *de minimis* advancement. 20 U.S.C. § 1412(a)(1); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989).

The Fifth Circuit defined a FAPE by delineating four factors for consideration as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the student's assessment and performance; 2) Is the program administered in the LRE; 3) Are the services provided in a coordinated and collaborative manner by key stakeholders; and, 4) Are positive academic and non-academic benefits demonstrated? *Michael F.*, 118 F.3d 245, 253. The Court treated these factors as indicators

of when an educational program meets the requirements of IDEA, but did not hold that they should be considered or weighed in any particular way. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F.3d 285, 293 (5th Cir. 2009); *Adam J. v. Keller ISD*, 328 F.3d 804, 810 (5th Cir. 2003).

To the maximum extent appropriate, children with disabilities are to be educated with children who are nondisabled. A school must determine whether education in a regular classroom, with the use of supplemental aids and service, can be achieved satisfactorily, and, if not, it must determine whether it has mainstreamed the child to the maximum extent appropriate. *Daniel R.R.* at 1048. Several factors are to be considered, such as 1) the steps taken by a school to accommodate the disabled child in general education 2) the extent to which the child receives an educational benefit from general education, and 3) the effect the disabled child has on the general education population. *Id.* At 1048-49; *J.H. v. Fort Bend Indep. School District No. 11-20718* (5th Cir. 2012)

Student has numerous challenges, and Parent works tirelessly to provide good care and opportunities for Student. Petitioner's complaint is a disagreement with placement in the RFS class. Discussion will consider the appropriateness of District's *** grade placement and its proposed placement for Student's *** grade year, compared to Student's *** grade placement. It is noted that Parent agreed to Student's *** grade placement on a trial basis and filed the instant action upon District's proposed placement for *** grade.

Petitioner believes that Student should be placed in general education with resource classes much like the *** grade placement during which Student had science and social studies in a general education setting along with electives and lunch. Petitioner's reasons for disagreement with the RFS placement are 1) the program is for autistic children and Student is not classified as autistic; 2) the RFS classroom consists of *** and thus, a safety concern; 3) Student learned inappropriate behaviors from ***; and 4) the RFS classroom has ***, or at best *** who is only in the classroom part of the class day. Petitioner argues that Student made passing grades; consequently, no placement change is appropriate.

In *** grade general education science, Student's teacher had to modify the modified curriculum to meet Student's level. Student required constant attention to the point that either the teacher or paraprofessional had to be with student at all times in order for Student to stay on task. Daily assignments were simplistic. Accommodations were made with Student's VI in mind. Student performed on a *** grade level. Student's passing grades were a result of intense one-on-one instruction, re-instruction, reinforcement of activities over a several week period of time, spiraling back in, re-testing, and re-doing of assignments. There was little interaction between Student and the general education peers. The net effect was that a classroom within a classroom was

developed for Student. With the accommodations and modifications provided by District, Student lacks the necessary skills to make progress in academic courses in the general education classroom.

When District suggested RFS as a possible *** grade placement for Student, it referred Parent to another campus' RFS class so that Parent could learn more about the program. The description of that program only spoke to children with autism. Parent was understandably concerned with a placement in a program designed strictly for children with autism. However, at Student's campus, RFS is a broader program. District's website includes in the program those children who share many behavior characteristics with students on the autism spectrum and need small group instruction and social skills support to meet their IEP goals. Further, Student's teacher testified that there are children in the RFS classroom who are not on the autism spectrum.

For Student's *** grade placement, District and Parent agreed to try the RFS classroom for academics and social skills, with regular resource classrooms for reading and math, along with a general education elective, science labs, and lunch. However, Student continued to have difficulty in the regular resource classes that oftentimes are larger, with more distractions. If left to work independently doing computer work, Student either simply clicked the keys on the computer rather than taking time to first read the assignments, or became distracted by noises or movement in the classroom. Student was unable to stay on task without constant redirection. District now recommends RFS for all academic subjects with a general education elective, science labs, and lunch with non-disabled children.

Petitioner argues that Student was *** in student's grade that spent the majority of student's academic classes in the RFS room. The other *** was not a *** grader and only came to RFS for social skills class on a regular basis, and was in and out of RFS at various other times. There is no requirement under the IDEA that a child's educational placement be determined solely on the basis of chronological age. *Letter to Smith*, 16 IDELR 548 (OSERS 1990).

Parent expressed fear for Student in a placement ***, but failed to present any evidence of danger for Student in the RFS classroom. Parent argued that Student developed inappropriate behaviors while in the RFS classroom. Specifically, Parent believed that Student learned to curse better. Student's RFS teacher testified that she heard no cursing from Student while in the RFS classroom. Student's resource math teacher noted that Student mimicked inappropriate behaviors *** in student's classroom, laughed loudly and disrupted class randomly. Student's RFS teacher made no mention of such behaviors in the RFS classroom.

Petitioner failed to carry its burden of proving that District's recommended placement is not the LRE. In light of Student's significant needs, education with non-disabled children in science labs, an elective, and lunch is the maximum extent of mainstreaming appropriate for Student.

Parent points to Student's worksheets in an effort to show that District fails to provide appropriate VI services to Student. District staff collaborates regularly regarding Student's visual needs. While Petitioner brought forth *some* worksheets that were not as "clutter free" or as large a type as *** believed appropriate, Parent failed to show that Student was unable to complete the assignments or that those type worksheets were so numerous as to hinder Student's progress in the classroom. Numerous accommodations are made for Student's visual needs including preferential seating, enlarged font, use of laptop and desktop computers with text to speech and word recognition programs, and lined paper, among others. Certainly, District will want to continue to ensure that appropriate worksheets for Student's visual needs are provided so that student's focus can be on the academic lesson rather than difficulty accessing the materials. Petitioner failed to carry petitioner's burden of proving that District failed to provide appropriate supplementary aids and services, AT assistance, or modifications and accommodations for student's visual needs.

Student's education program is individualized based on numerous assessments including an IEE. The program is administered in the LRE. Key stakeholders, provide Student's services in a coordinated and collaborative manner. Student's visual needs are considered regularly. District responds positively to numerous suggestions and requests of Parent. District and Parent collaborated for several months before arriving at Student's *** grade placement decision. In RFS, Student's program is delivered in a small, quiet, structured setting that allows for much individualized instruction. As a consequence, Student's *** that was exhibited in regular resource and general classrooms subsided. Student made progress toward student's educational goals. Based on the evidence, Student's educational program is reasonably calculated to provide a meaningful educational benefit. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997).

Conclusions of Law

1. Student is eligible to receive special education services as a child with disabilities of other health impaired ("OHI"), orthopedically impaired ("OI"), VI, and speech impaired ("SI").
2. Klein Independent School District is responsible for the provision of Student's special education services.
3. Respondent's proposed placement of Student in the *** program with science labs, Student's chosen elective(s), and lunch with non-disabled children for the 2013-2014 school year is the least restrictive environment and is appropriate. Petitioner failed to carry the burden of proving that District's 2012-2013 placement was not the LRE. 34 C.F.R. § 300.114 (a)(2) and §300.115; *Schaeffer v Weast*, 546 U.S. 49; 126 S.Ct 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983).

4. Petitioner failed to carry petitioner's burden of proving that Respondent denied student a FAPE. *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); *Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982).

Order

Based on the foregoing stipulations, findings of fact and conclusions of law, IT IS ORDERED that all relief requested by Petitioner is DENIED.

SIGNED on July 18, 2013.

/s/

BRENDA RUDD
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §1415(i)(2) and 34 C.F.R., §300.516.

DOCKET NO. 102-SE-0113

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENTS	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
KLEIN INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

- Issue Number 1:** Whether District failed to place Student in the least restrictive environment of a general education setting and/or resource setting
Held: For the District
Citation: 34 C.F.R. §§ 300.114(a)(2), 300.115; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 2:** Whether District failed to evaluate Student in all areas of suspected disabilities
Held: For the District
Citation: 34 C.F.R. §300.111; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 3:** Whether District failed to provide appropriate supplementary aids and services, including but not limited to accommodations and modifications to address Student’s visual impairment in order to allow Student to be education in the LRE
Held: For the District
Citation: 34 C.F.R. §300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 4:** Whether District failed to train Student’s teachers on student’s disabilities, including visual impairment
Held: For the District
Citation: 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 5:** Whether District failed to provide Student with appropriate assistive technology support
Held: For the District
Citation: 34 C.F.R. §300.105; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

- Issue Number 6:** Whether District failed to provide Student with appropriate visual impairment services
Held: For the District
Citation: 34 C.F.R. 300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 7:** Whether District failed to provide Student's teachers with appropriate visual impairment services
Held: For the District
Citation: 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 8:** Whether District failed to appropriately evaluate Student taking into account student's visual impairment
Held: For the District
Citation: 34 C.F.R. 300. 101; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 9:** Whether District changed Student's educational placement at the end of the 2011-2012 school year without an appropriate evaluation to support such change
Held: For the District; IDEA does not require an evaluation prior to change of placement
Citation: 34 C.F.R. §300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 10:** If Student was determined eligible as a student with autism, whether District provided required educational services under the autism supplement during the 2011-2012 school year to date
Held: For the District; Student was not determined eligible
Citation: 34 C.F.R. §300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 11:** Whether District failed to provide a free, appropriate public education to Student
Held: For the District
Citation: 34 C.F.R. §300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)