

**SOAH DOCKET NO. 701-23-03967.IDEA
TEA DOCKET NO. 057-SE-1022**

STUDENT, B/N/F PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
v.	§	
	§	HEARING OFFICER FOR
SPLENDORA INDEPENDENT SCHOOL DISTRICT, Respondent	§	
	§	
	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brings this action against the Splendora Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. Petitioner filed the request for a due process hearing (Complaint) on October 25, 2022, with notice issued by the Texas Education Agency (TEA) on the same day.

The main issue in this case is whether the District’s proposed placement of Student is appropriate and in Student’s least restrictive environment (LRE). The Hearing Officer concludes that the District’s proposed placement is in Student’s LRE and appropriate to meet Student’s unique needs.

I. PROCEDURAL HISTORY

Student was represented *pro se* throughout this litigation by Parent, ***. The District was represented throughout this litigation by its legal counsel, Paula Roalson of Walsh, Gallegos, Treviño, Kyle & Robinson, P.C. There were three continuances granted in the case before the due process hearing. At the conclusion of the hearing, the parties agreed to extend the decision deadline to accommodate the parties’ desire to submit written closing briefs. Both

parties filed timely written closing briefs on April 3, 2023. The Decision in this case is due on April 17, 2023.

II. DUE PROCESS HEARING

The due process hearing was conducted remotely via Zoom on March 2, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented *pro se* by Parent. Student's father also attended the due process hearing. Respondent continued to be represented by Paula Roalson. In addition, ***, the Director of Special Programs for the District, attended the hearing as the party representative.

III. ISSUES

A. Petitioner's Issue

Petitioner confirmed the following IDEA issue for decision in this case:

1. Whether the District's proposed placement is appropriate and in Student's LRE.

B. Respondent's Legal Position and Additional Issue

1. Respondent generally and specifically denies the factual allegations stated in the Complaint and denies responsibility for providing any of Petitioner's requested relief.
2. Respondent asserts a counterclaim to override parental consent to conduct a reevaluation of Student.

IV. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following item of requested relief:

1. Order the District not to change Student's educational placement.

V. FINDINGS OF FACT

Student History

1. Student is *** years old and attends *** grade at *** in the District. Student lives in the District with Student's ***. Student's parents provide great support and Student has a strong relationship with them. Student receives special education and related services as a student with Autism and a speech impairment. Student enjoys ***.¹
2. Student is independent at home. Student does Student's chores without prompting and is able to dress, do dishes, and clean Student's room without assistance. Student is active *** and interacts well with adults and friends in Student's community. However, when Student is in an academic setting, Student struggles to keep up academically with Student's classmates.²
3. Student began school in the *** Independent School District (***) during the 2015-16 school year when Student was *** years old. Student then attended *** Independent School District (***) from *** in the 2016-17 school year through *** grade in the 2021-22 school year. Student transferred into the District when Student's family moved from *** ISD prior to the beginning of the 2022-23 school year.³

¹ Joint Exhibit 4, pages 1, 13 (J4, at 1, 13); J21, at 2; Transcript (TR) 111.

² TR 208-12.

³ J1, at 9-10; TR 49.

***** ISD and Student's Evaluation History**

4. Student was first evaluated for special education and related services when Student attended *** ISD as a *** year old. At the time, Student was identified as a student with a receptive/expressive language disorder and was eligible for special education under the category of speech impairment. *** ISD evaluated Student again during the 2016-17 school year. At that time, *** ISD continued Student's eligibility for special education and related services as a student with a speech impairment. *** ISD also added eligibility under the category of Autism. The evaluation found Student had a non-verbal Intelligence Quotient (IQ) score of *** and a full scale IQ score of ***.⁴
5. As early as ***, Student experienced issues accessing the curriculum even though Student's teachers always enjoyed Student and found Student extremely kind. During the 2016-17 school year, Student defied directives from Student's teachers and would have emotional outbursts when asked to transition away from a preferred activity. For the 2017-18 school year, to accommodate some of those issues, *** ISD placed Student in the *** program for Student's core classes. The *** program is a structured classroom generally used for students with average intelligence who also have Autism and/or an expressive language disorder. Students in that room benefit from a visual schedule, a lot of structure, a lower staff to student ratio, extra academic support, and direct social skills instruction. Student remained in the *** program for core classes during the remainder of Student's time in *** ISD.⁵
6. During the 2019-20 school year, *** ISD conducted a three-year reevaluation of Student. *** ISD completed the evaluation in April 2020. The evaluation found Student to have continued eligibility for special education and related services as a student with Autism and a speech impairment.⁶
7. Student was very sweet and well-liked by teachers according to the evaluation. However, the evaluation expressed some concerns about Student's ability to be educated with Student's same-age peers. In particular, the evaluation found Student did not have the vocabulary or prior knowledge to understand classroom activities and instructions. As such, Student rarely participated, rarely followed conversations appropriately, and had difficulty interacting with Student's peers. Student often played by ***self or played in parallel to other children without

⁴ J1, at 6, 9, 11; J4, at 24; J21, at 25; TR 50.

⁵ J1, at 11; TR 56-57.

⁶ J1.

- interacting with them. When Student tried to interact with peers, Student often ***. Student did not make academic progress during the 2019-20 school year. Although Student was in *** grade, Student's teacher worked one-on-one with Student from a ***. Student still struggled with that material.⁷
8. The evaluation made a number of recommendations. Among them, the evaluation recommended keeping oral directions short and simple and accompanying them with visual cues, regularly reading to Student to provide appropriate linguistic modeling, speech and language therapy, preparing Student in advance for any changes in routine, and building as much structure as possible into Student's academic setting.⁸
 9. In October 2021, *** ISD personnel strongly recommended placing Student in a *** program called ***, because Student was "in the wrong classroom setting" to meet Student's needs. Parent objected to this. *** ISD held multiple meetings with Parent to explain the benefits of the program. Ultimately, *** ISD agreed, at Parent's request, not to place Student in the *** program. *** ISD said it would reassess Student's needs in the future.⁹
 10. Student's last Admission, Review, and Dismissal (ARD) Committee meeting in *** ISD occurred on April ***, 2022, when Student was in *** grade. Student was still eligible for special education and related services as a student with Autism and a speech impairment as Student had been since 2017. The ARD Committee noted that Student had no behavioral referrals for any serious behavior issues during the 2021-22 school year. However, Student struggled with paying attention and needed frequent redirection to stay on task, limiting Student's ability to complete any independent work. Student required "heavy teacher support" to access the curriculum.¹⁰
 11. At that time, Student was unable to ***, though Student was able to ***. With teacher support and accompanying pictures, Student was able to ***. While Student could not ***, Student could ***. In short, Student required "constant prompting." As a result, Student continued to be placed in the *** classroom for Student's core classes of ***

⁷J1, at 7, 11-12, 21-22.

⁸J1, at 23-24.

⁹J24, at 4; TR 84.

¹⁰J11, at 1-3.

***. Student attended Student's other classes in the general education setting with support from *** staff, accommodations, and in-class support.¹¹

Student Transfers into the District

12. Student began the 2022-23 school year by transferring into the District. On August ***, 2022, prior to the start of the school year, Parent and the District signed a "Transfer Student Agreement to Implement." The District agreed to implement "comparable services," meaning it would implement *** ISD's IEP to the best of the District's ability. The District has a *** placement, which is comparable to *** ISD's *** program and similarly designed for students with IQ scores in the average range. The District agreed to provide Student's core classes in that setting. The District also agreed to provide the same related services and accommodations Student had been receiving in *** ISD.¹²
13. Student receives a number of related services, supports, and accommodations in the District. Student has a total of *** classroom accommodations, including directions delivered in a variety of ways with simplified vocabulary, encouragement for classroom participation, oral reading assistance with tests and assignments, and pairing images or texts with photographs or visual representations. For related services, the District offered 30 minutes per day of direct social skills training, 30 minutes per week of direct speech therapy, and 20 minutes of direct occupational therapy twice per nine weeks. The District implemented all IEP accommodations, supports, and related services with fidelity.¹³
14. The District convened three ARD Committee meetings in the fall of 2022: on September ***, September ***, and October ***. Each meeting ended in disagreement. At the September *** meeting, the District explained that it suspected the existence of ***. The most recent IQ score the District had available came from the 2017 evaluation *** ISD had conducted that found Student had a full scale IQ score of *** and a non-verbal IQ score of ***. The District requested the opportunity to do further testing to get an updated picture of Student and determine what supports or services might best help Student access the curriculum. Parent agreed to the reevaluation during the meeting, but subsequently refused to sign consent for the reevaluation.¹⁴

¹¹ J11, at 3-4, 19.

¹² J15; TR 55-57.

¹³ J21, at 16; TR 105-07.

¹⁴ J21, at 26-30; TR 44-45, 191.

15. As in *** ISD, Student is “very likeable,” “well-behaved,” “sweet,” and Student’s teachers enjoy Student. However, the District’s assessment of Student’s performance discussed during the three ARD Committee meetings in the fall of 2022 was also similar to *** ISD’s. Student is not able to complete work independently and is performing significantly below grade level, as Student was in *** ISD. Student performs on a *** level in ***. In *** class, Student requires constant one-on-one attention from a teacher and must ***. In *** class, while Student’s peers are working on ***, Student is working on a *** and is unable to *** independently.¹⁵
16. In *** class, the teacher needs to work directly with Student one-on- one for Student to start Student’s work. Student is not able to ***, even with assistance, while the other students in class are ***. For example, on a September assignment in which students were asked to ***. Student could not explain verbally how *** when prompted. While students receiving special education services often require accommodations and modifications, Student is the only child in the *** class who requires an entirely “alternate curriculum” with one-on-one attention “100% of the time across all academic settings” from Student’s classroom teachers. Student has not made adequate progress on the IEP goals Student had in *** ISD, so the District kept those goals in place.¹⁶
17. Most of Student’s IEP goals have been in place since at least the 2020-21 school year. Student has demonstrated minimal progress on them over that time. For example, in April 2021, *** ISD set a goal for Student of ***. *** ISD maintained the exact goal in April 2022 since Student had made minimal progress toward it. The District did not change that goal during the 2022-23 school year and noted Student has not made progress toward it. Similarly, in April 2021, Student had a goal to ***. *** ISD maintained that exact goal in April 2022. Student has not progressed on that goal in the *** placement in the District. A student should be able to master each IEP goal within a year. Student’s goals, already indicative of work well below Student’s current grade level, have been in place over multiple school years in two different school districts without any change in the

¹⁵ J21, at 2, 25; TR 57-59, 93-98, 103-04, 108-09, 120.

¹⁶ J21, at 25; TR 57-59, 82-83, 93-98, 108-09.

progress expected toward those goals. This demonstrates Student has not progressed in the *** placement in the District or the comparable *** placement in *** ISD.¹⁷

18. Student becomes frustrated that Student cannot do the work other students in the class can do. Student's requiring so much one-on-one attention from teachers also impacts the learning of other students and slows down their ability to learn new material. Other students and their parents have complained to District personnel that all the time teachers spend with Student takes away from other students' ability to obtain assistance or learn effectively. As a result of Student's requiring an "alternate curriculum" and the impact it was having on Student and the other children in Student's classes, the District recommended assignment to the *** classroom for ***. The District proposed Student attend *** in the general education setting.¹⁸
19. The *** classroom is the District's equivalent of the *** program *** ISD had strongly recommended for Student in October 2021. The *** classroom is located at ***, because Respondent does not offer an *** classroom on every campus in the District. Respondent agreed to provide daily transportation to and from that campus. The *** classroom is part of the District's broader *** program. The goal is to teach students who *** the basic skills they will need to function in academic settings and eventually in vocational and community settings.¹⁹
20. As she had when *** ISD proposed a comparable placement in October 2021, Parent disagreed with the District's proposed placement in the *** classroom at ***. The District offered Parent a chance to tour the proposed placement, but Parent declined. Parent thought Student could access the curriculum with the help of in-class supports. Student has friendships with Student's peers in class and Parent does not want to jeopardize those. After the three ARD Committee meetings in the fall of 2022 in which the District proposed placement in the *** classroom ended in disagreement, Parent filed the instant Complaint.²⁰

¹⁷ J5, at 8-9; J11, at 9-10; TR 82-83.

¹⁸ J21, at 29-30; TR 109, 111-12, 126, 145.

¹⁹ TR 42-43, 76-78, 84.

²⁰ J21, at 26; TR 132-33.

VI. DISCUSSION

A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). The district has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001.

The district is responsible for providing Student with specially designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry in a typical case under the IDEA is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399-400 (2017).

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.²¹ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in

²¹ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n.4 (5th Cir. 2009).

this case is on Petitioner to show the District failed to provide Student with special education and related services in Student's LRE. *Id.*

C. Education in Student's LRE

The sole issue for Petitioner in this case is whether the District's proposed placement of Student in the *** classroom is appropriate and in Student's LRE. The IDEA requires that a student with a disability be educated with peers without disabilities to the maximum extent appropriate and that special classes, separate schooling, and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the "least restrictive environment requirement." 34 C.F.R. § 300.114(a)(2)(i-ii).

State regulations require a school district's continuum of instructional arrangements be based on students' individual needs and IEPs and include a continuum of educational settings, including mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.1005(c).

To determine whether a school district is educating a student with a disability in the LRE, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Educ., 874 F. 2d 1036, 1048 (5th Cir. 1989).

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs. *Id.* This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting;
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting;
- the child's overall experience in general education, balancing the benefits of general and special education; and
- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

Id., at 1048-49.

In this case, the District has made extensive efforts to provide Student with supplemental aids and services in the general education setting. "The [IDEA] does not permit states to make mere token gestures to accommodate' a [student with a disability], it instead provides a broad, but not limitless, requirement to modify and supplement the regular or general education setting for the student." *H.W., by & through Jennie W. v. Comal Indep. Sch. Dist.*, 2021 WL 3887696, *14 (W.D. Tex. 2021) (quoting *Daniel R.R.*, 874 F.2d at 1048).

District teachers need to modify the curriculum to such an extent that they have created an "alternate curriculum" to accommodate Student, who requires one-on-one academic support from teachers 100% of the time. Student is performing on a *** level in *** grade

classes. The IDEA does not require a school district to create an alternative curriculum or offer a “classroom within a classroom” in order to comply with the IDEA’s LRE requirement. *Brillon v. Klein Indep. Sch. Dist.*, 100 Fed. App’x. 309, 313 (5th Cir. 2004).

The District provided accommodations and related services for Student to help Student access Student’s curriculum. Parent did not disagree with the accommodations and services provided in the IEP during the September and October ARD Committee meetings. They were the same as those provided in *** ISD. Additionally, though not written in Student’s IEP, the District was essentially providing one-on-one teacher support 100% of the time across all settings. Parent only disagreed with the suggested placement in which the District planned to offer services—the *** classroom at ***.

Because the District is providing essentially the same services *** ISD did and those services are based on observation and assessment of Student and are agreeable to Parent, this is not a situation in which the District did not provide sufficient aids or services prior to recommending a more restrictive setting. *See Daniel R.R.*, 874 F.2d, at 1048. Student is not obtaining academic benefit in Student’s setting and is not progressing on IEP goals that have been in place over multiple school years in multiple school districts. To the extent that Student is receiving any educational benefit currently, it is due to the entirely separate curriculum that Student’s individual needs require and that has been developed by Student’s teachers.

Student also becomes frustrated by the demands of a grade-level curriculum. Student is still performing on a *** level and has not made progress on the IEP goals Student has had since Student was a student in *** ISD. Based on the 2017 intelligence testing determining Student to be well below average, it is not surprising that Student has struggled in placements that are designed for children with average intellectual profiles. Although Student has friendships with classmates

in Student's current setting and is a very sweet student well-liked by teachers, when balancing the overall benefits of that placement, the potential academic benefits of the proposed placement in the *** classroom outweigh these social benefits in Student's current placement.

The proposed placement still includes access to the general education setting and typically developing peers for ***. In Student's current placement, Student's teachers need to be one-on-one with Student 100% of the time, taking away from their ability to serve other students in class and slowing down the learning of those students. *See Id.* The proposed placement will allow Student to receive the attention Student needs without disrupting the learning of Student's peers.

Thus, when considering the *Daniel R.R.* factors as a whole, the District may place Student in the *** classroom. The *** classroom placement proposed by the District represents Student's current LRE and the best placement in which Student can make academic progress and in which the District can meet Student's unique needs.

D. Respondent's Counterclaim

In addition to Petitioner's LRE issue, Respondent asserted an issue in this dispute. Respondent attempted to obtain consent to evaluate Student for *** in September 2022. Student has not been reevaluated for special education and related services since April 2020 and Student has not had cognitive intelligence testing since 2017. Student's three-year reevaluation is due in the same month as this decision. 34 C.F.R. § 300.303(b)(2). Parent initially agreed to provide consent to reevaluate Student but withdrew consent once it became clear the District was recommending placement in the *** classroom.

Before conducting a reevaluation, a school district must obtain informed consent from the parent of the student with a disability. 20 U.S.C. §1414(c)(3); 34 C.F.R. §300.300(c)(1)(i). If the parent of a student with a disability refuses to consent to a reevaluation, the school district may pursue the reevaluation by filing a due process hearing request to override lack of parental consent. 34 C.F.R. § 300.300(c)(1)(ii). Here, the District filed a counterclaim for that purpose.

To obtain an order overriding a lack of parental consent, a school district must show it is essential to override lack of parental consent and demonstrate reasonable grounds exist to do so. *Shelby S. ex rel. Kathleen T v. Conroe Indep. Sch. Dist.*, 454 F. 3d 450, 454 (5th Cir. 2006). A school district that demonstrates the evaluation is essential for formulating a student's special education plan meets its burden for overriding the lack of parental consent. *Id.*

Student last underwent intelligence testing in 2017, at which time Student's non-verbal and full scale IQ scores were well below average. Student is currently performing on a *** grade level in Student's core academic classes and requires one-on-one attention across all settings. The District has just begun serving Student this year and is trying to learn more about Student. These are reasonable grounds for obtaining parental consent for a reevaluation. Furthermore, the reevaluation will be due under the IDEA by the time this decision is issued. 34 C.F.R. § 300.303(b)(2). That provides a further need for the reevaluation to begin as quickly as possible.

A parent may not assert a student is entitled to special education services while simultaneously refusing to allow a school district to evaluate the student to determine what those services may be. *Andress S. v. Cleveland Indep. Sch. Dist.*, 64 F. 3d 176, 178 (5th Cir. 1995), cert. denied, 519 U.S. 812 (1996). A parent who desires for parent's child to receive special education services must allow a school district to reevaluate parent's child using school district personnel. *Id.* at

179. Parent wants Student to continue to receive special education services and accommodations. As such, Parent must allow the District to reevaluate Student as requested.

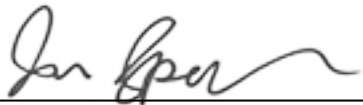
VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer*, 546 U.S. at 62.
2. The District's proposed placement in the *** classroom with appropriate transportation services so Student can easily get to Student's new campus represents Student's LRE and is appropriate to meet Student's unique needs. 34 C.F.R. § 300.114(a)(2)(i)(ii); *Daniel R.R.*, 874 F.2d at 1048.
3. The District is entitled to override Parent's refusal to consent to a reevaluation of Student. 34 C.F.R. § 300.300(c)(1)(ii).

VIII. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law, Petitioner's request for relief is **DENIED**.
2. Respondent's counterclaim is **GRANTED**. Respondent may begin an evaluation of Student without the need for parental consent.
3. All other relief not specifically stated herein is **DENIED**.

SIGNED April 17, 2023.



Ian Spechler
Special Education Hearing Officer
For the State of Texas

IX. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).