

**DOCKET NO. 040-SE-1017**

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

**DECISION OF THE HEARING OFFICER**

**I. PROCEDURAL HISTORY**

Petitioner, STUDENT, b/n/f PARENT (“Petitioner” or “Student”) brings this action against the Huntsville Independent School District (“Respondent,” or “the School District”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations. The main issues in this case are whether the School District failed to implement Student’s Individual Education Plan (IEP) and Behavioral Intervention Program (BIP), and whether the School District’s proposed change in placement for Student is appropriate.

The hearing officer concludes that the School District implemented Student’s IEP and BIP during the 2017-18 school year and proposed an appropriate placement for Student in the least restrictive environment.

**A. Continuances and Extension of Decision Due Date**

There were two continuances in this case. The hearing was originally scheduled for December 12, 2017, with the decision due January 7, 2018. The first continuance was granted for good cause at Petitioner’s request by Order No. 3 on November 20, 2017, to allow time for Independent Educational Evaluations (IEEs) that were in progress to be completed. The hearing was continued to January 17, 2018, and the due date was extended to February 23, 2018. The

second continuance was granted by Order 4 on January 17, 2018, at Respondent's request for good cause due to inclement weather that would have made travel to the hearing hazardous for the parties. The hearing was continued to February 1, 2018, and the decision due date was extended to March 12, 2018. At the joint request of the parties, the decision due date was extended for good cause to March 19, 2018, to allow for post-hearing briefing with the benefit of the hearing transcript.

### **B. Legal Representatives**

Student was represented throughout this litigation by Student's mother, PARENT (Parent). The School District was represented throughout this litigation by its legal counsel Christina Garcia and Paula Maddox Roalson of Walsh, Gallegos, Treviño, Russo and Kyle, P.C.

### **C. Resolution Session**

The parties met in a resolution session on November 7, 2017, but were unsuccessful in resolving the issues in this case.

### **D. Preliminary Motions**

One preliminary motion was raised prior to the hearing. The School District challenged the sufficiency of the complaint in the response to the complaint on November 2, 2018. Order No. 2 issued on November 8, 2017, denied Respondent's Sufficiency Challenge to the Complaint.

## **II. DUE PROCESS HEARING**

The due process hearing was conducted on February 1, 2018. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Student's Parent. Respondent continued to be represented by its legal counsel Christina Garcia and

Paula Maddox Roalson. In addition, \*\*\*, the School District's Director of Special Education, attended the hearing as Respondent's party representative.

Both parties filed written closing arguments in a timely manner. The Decision in this case is due March 19, 2018.

### **III. ISSUES**

#### **A. Petitioner's Issues**

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

#### **Free Appropriate Public Education (FAPE)**

1. Respondent has denied Student a FAPE by failing to implement Student's IEP during the 2017-18 school year.
2. Respondent has denied Student a FAPE by failing to implement Student's BIP during the 2017-18 school year.
3. Respondent has denied Student a FAPE by failing to train School District staff on implementation of Student's BIP.

#### **Placement**

4. Respondent has violated the IDEA by changing Student's placement without parental consent.
5. Respondent has failed to educate Student in the Least Restrictive Environment (LRE).

#### **Parental Participation**

6. Respondent has denied Petitioner meaningful parental participation by failing to consider the input of Student's parent.

**B. Respondent's Legal Position and Additional Issues**

Respondent has entered a general denial for all claims and allegations in Petitioner's complaint. In addition, Respondent disputes the facts upon which Petitioner's claims and allegations are based.

**IV. REQUESTED RELIEF****A. Petitioner's Requested Relief**

Petitioner confirmed the following items of requested relief:

1. Compensatory tutoring for Student in all academic areas.
2. Implementation of all of the recommendations made by the independent evaluators who evaluated Student.
3. Retention by Respondent of an independent Board Certified Behavior Analyst to assist in implementation of Student's BIP, including training of staff working with Student.

**B. Respondent's Requested Relief**

1. Dismiss any claims arising outside the one year statute of limitations rule as applied in Texas;
2. Dismiss all claims arising under laws other than the IDEA; and
3. Find in favor of the School District's proposed program and placement.

**V. CLAIMS OUTSIDE HEARING OFFICER'S JURISDICTION**

Respondent entered an affirmative defense, requesting dismissal of Petitioner's claims arising prior to August 7, 2017. Respondent asserted Petitioner fully and finally released any and all claims arising prior to August 7, 2017, in settlement of a previous due process complaint.

Respondent contended Petitioner knowingly and willingly released these claims, and thus further litigation of those claims is outside of the jurisdiction of the hearing officer in this matter. Respondent's affirmative defense was granted in Order No. 3 and Petitioner's claims were limited to those arising after August 7, 2017.

## VI. FINDINGS OF FACT

1. Student is \*\*\* year old \*\*\* Grade student in the School District. Student has difficulty staying focused and on task in the school environment. Student has an inability \*\*\* and demonstrates inappropriate types of behaviors \*\*\*. Student's behaviors significantly affect Student's educational progress and social functioning. Student is eligible for special education services under the categories of \*\*\* and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). The School District identified Student as eligible for special education services in March of 2016.<sup>1</sup>
2. Student displays a significant level of distractibility, impulsivity, \*\*\*. Student exhibits \*\*\*. Student's \*\*\*. Student has difficulty \*\*\* expressing Student's emotions and difficulty with being flexible \*\*\*.<sup>2</sup>
3. \*\*\*. Student's ability to acquire academic and social skills is negatively impacted by the frequency and nature of these challenging behaviors.<sup>3</sup> Student engages in these behaviors to avoid \*\*\* nonpreferred tasks, \*\*\*, or to avoid \*\*\* the discontinuation of a preferred activity, \*\*\*.<sup>4</sup> These behaviors also occur when Student is denied access to, or requested to discontinue, a tangible item or preferred activity, \*\*\*.<sup>5</sup>
4. Student's \*\*\* behaviors have included \*\*\*.<sup>6</sup> During episodes of \*\*\*, Student frequently \*\*\*. These episodes interfere with the learning of other students in the class.<sup>7</sup> During the first two months of the 2017-18 school year, Student exhibited \*\*\*.<sup>8</sup> Student's behavior frequently \*\*\*.<sup>9</sup>

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<sup>1</sup> Joint Exhibit (J.Ex.) 1, page (p.) 20; Petitioner's Exhibit (P.Ex.) 3, Independent Education Evaluation from \*\*\*, p. 29; Respondent's Exhibit (R.Ex.) 13, p. 1.

<sup>2</sup> J.Ex. 1, p. 20-21.

<sup>3</sup> R.Ex. 7, p. 1; R.Ex. 25.

<sup>4</sup> R.Ex. 7, p. 26.

<sup>5</sup> R.Ex. 7, p. 33; Transcript (TR) Volume (Vol.) 2, p. 256-257.

<sup>6</sup> R.Ex. 7, p. 7.

<sup>7</sup> R.Ex. 7, p. 4.

<sup>8</sup> R.Ex. 13, p. 7; R.Ex. 22.

<sup>9</sup> R.Ex. 7, p. 7.

5. Student's \*\*\* behavior includes \*\*\*. Student \*\*\*. Student misses significant amounts of instructional time, from \*\*\*.<sup>10</sup> The School District must deploy multiple staff members, \*\*\* in order to ensure Student's safety.<sup>11</sup> During the \*\*\* of the 2017-18 school year, Student had \*\*\*.<sup>12</sup>
6. Student's \*\*\*. Student engages in this behavior \*\*\*. Student's \*\*\* and for school district staff. \*\*\*.<sup>13</sup> During \*\*\* of the 2017-18 school year, Student engaged in \*\*\*.<sup>14</sup>
7. Student's \*\*\*. \*\*\*. \*\*\*.<sup>15</sup> During the \*\*\* of the 2017-18 school year, Student engaged in \*\*\*.<sup>16</sup>
8. During the 2017-18 school year, the School District implemented a BIP to address Student's \*\*\*. Student's BIP directs School District staff to \*\*\*. Student's BIP provides for social skills training through counseling services, teaching replacement behaviors in the classroom at least weekly, helping Student practice appropriate verbal expressions of discontent with an academic activity, preteaching compliance with teacher's instructions, reinforcing appropriate behavior immediately, praising Student when Student displays appropriate behavior, modelling the appropriate way to request help, coaching the Student in problem solving, preteaching proper stress relief techniques and preteaching appropriate verbal responses in peer interactions. Adaptations in Student's BIP include preferential seating, chunking Student's assignments into smaller, attainable tasks, small group instruction, frequent breaks, establishing a cool off area for Student to utilize when Student needs a break and privately rewarding Student for appropriate behavior. The consequences in Student's BIP include reminding Student of the rules and expectations, reminding Student of Student's ability to make correct choices, intervening to offer assistance when Student is frustrated, requiring restitution, \*\*\*, removing Student from the classroom, referring Student to the school principal for corrective feedback and contacting Student's Mother.<sup>17</sup>
9. Prior to the beginning of the 2017-18 school year, the School District conducted a training on the implementation of Student's BIP for all of the staff who would be working with Student during the school year.<sup>18</sup>

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<sup>10</sup> R.Ex. 7, p. 9-13.

<sup>11</sup> TR Vol. 2, p. 203-205.

<sup>12</sup> R.Ex. 13, p. 7.

<sup>13</sup> R.Ex. 7, p. 14-18.

<sup>14</sup> R.Ex. 13, p. 7.

<sup>15</sup> R.Ex. 7, p. 19-21.

<sup>16</sup> R.Ex. 13, p. 7; R.Ex. 20.

<sup>17</sup> R.Ex. 13, p. 42-45.

<sup>18</sup> R.Ex. 3; TR Vol. 1, p. 80-82 and 131-132.

10. A School District Board Certified Behavior Analyst (BCBA) is assigned to Student's campus. The BCBA meets with staff working with Student on a daily basis to review Student's behavior and provide guidance to staff on implementation of Student's BIP and other strategies for addressing Student's behavior. The BCBA also meets weekly with the School District behavior coordinator to review Student's behavior and implementation of Student's BIP.<sup>19</sup>
11. Student's \*\*\* behavior is reinforced when Student is \*\*\*. Student will continue to engage in the \*\*\* behaviors if engaging in the behaviors results in the Student successfully \*\*\*.<sup>20</sup>
12. Student has been engaging in the \*\*\* behaviors at school for \*\*\*. Through these behaviors, Student has been successful in avoiding \*\*\*. Student will be \*\*\*.<sup>21</sup>
13. The School District has tried a variety of strategies, and provided many different supplemental services, to meet Student's needs and to address Student's behavior in the general education environment. The School District has attempted positive reinforcement, a token reward system, and teaching replacement behaviors. The School District has also provided Student with an inclusion special education teacher in the general education classroom, an educational assistant, frequent breaks during instruction, and reduced assignments and expectations. In addition, the School District contracted with an outside BCBA to conduct a functional behavioral assessment (FBA) to better understand Student's behavior. To date, these supplemental aids and intervention strategies have not resulted in a reduction in Student's \*\*\* behaviors.<sup>22</sup>
14. To address Student's needs, Student requires targeted interventions in \*\*\*, positive behavioral supports, counseling services, and positive school experiences.<sup>23</sup> Student requires counseling services to help Student learn to express Student's feelings appropriately, to problem solve, to develop coping strategies and to \*\*\*.<sup>24</sup> Student needs regular and consistent positive reinforcement when Student displays appropriate behavior.<sup>25</sup>
15. Student reads below grade level. Student has difficulty \*\*\*.<sup>26</sup>

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<sup>19</sup> TR Vol. 1, p. 85-87.

<sup>20</sup> R.Ex. 7, p. 33-34.

<sup>21</sup> R.Ex. 7, p. 39-40.

<sup>22</sup> R.Ex. 7, p. 39-40; R.Ex. 13, p. 34; TR Vol. 1, p. 92.

<sup>23</sup> J.Ex. 1, p. 20-21.

<sup>24</sup> P.Ex. 3, p. 31.

<sup>25</sup> P.Ex. 3, p. 32.

<sup>26</sup> R.Ex. 13, p. 2-4.

16. During the 2017-18 school year, the School District provided Student with inclusion support provided by a special education teacher in Student's general education \*\*\* class. The same special education teacher provided Student with one-on-one instruction in a resource room in \*\*\* and \*\*\*. This same teacher ensured that Student's IEP was being implemented by other teachers on the campus, supporting their instruction, assisting Student in Student's understanding of Student's academic tasks, and writing lesson plans for Student.<sup>27</sup>
17. The School District made counseling services available to Student and developed counseling goals to assist Student with Student's social skills and coping strategies. Student is resistant to counseling services and regularly refuses to work with the School District counselor.<sup>28</sup>
18. In Student's current placement, Student is at risk of unsafe behavior towards \*\*\*self and others due to Student's \*\*\*.<sup>29</sup> Student's behavior disrupts the educational setting and requires \*\*\* redirection, causing interruptions to the instruction being delivered in the general education classroom.<sup>30</sup> As the result of Student's behavior, \*\*\*.<sup>31</sup> Student is unable to make progress on Student's IEP goals in the general education classroom setting.<sup>32</sup>
19. Student requires a placement where behavioral interventions can be consistently and effectively implemented. Student requires a setting in which School District staff can focus on the extinction of Student's challenging behaviors without the \*\*\* of Student's behavior impacting the general education environment. To meet Student's academic, social and behavior needs, Student requires specially designed instruction in a small staff to student ratio setting with \*\*\*. Behavior interventions for Student need to be implemented by staff trained in safely responding to \*\*\*.<sup>33</sup>
20. During an Admission Review and Dismissal (ARD) committee meeting on \*\*\*, 2017, the School District proposed changing Student's placement. The School District proposed moving Student from the general education classroom to a \*\*\* classroom for \*\*\*. Student would continue to attend general education for special areas (\*\*\*) on a rotating schedule.<sup>34</sup>

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<sup>27</sup> TR Vol. 1, p. 135-137.

<sup>28</sup> R.Ex. 13, p. 3-4 and 18-19.

<sup>29</sup> P.Ex. 3, p. 32.

<sup>30</sup> R.Ex. 13, p. 25; TR. Vol. 1, p. 146.

<sup>31</sup> TR. Vol. 2, p. 207-210 and 212.

<sup>32</sup> R.Ex. 14, p. 1-7.

<sup>33</sup> R.Ex. 7, p. 45; R.Ex. 13, p. 24; TR Vol. 2, p. 266-268 and 272.

<sup>34</sup> R.Ex. 13, p. 28.



21. The \*\*\* Classroom is staffed with \*\*\* teacher and \*\*\* paraprofessionals and has a small number of students, typically from \*\*\*. It is a highly structured environment with a focus on individual student behavior interventions and student academic deficits.<sup>35</sup>
22. Student's Parent attended and participated in the \*\*\*, 2017 ARD committee meeting and a follow-up meeting on \*\*\*, 2017. Her objections to Student's placement change were received and considered by the School District.<sup>36</sup>
23. On \*\*\*, 2017, Student's Parent filed a complaint initiating this due process hearing. Following receipt of the complaint, the School District put its plan to change Student's placement on hold, pending the outcome of the hearing.<sup>37</sup>

## VII. DISCUSSION

### A. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a 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)*. Under IDEA a school district has a duty to provide a FAPE to all children with disabilities residing within its jurisdictional boundaries between the ages of 3 and 21. *34 C.F.R. § 300.101 (a)*. The evidence showed Student was a child with a disability residing within the jurisdiction of the School District and thus the School District had the duty to serve Student under IDEA.

The seminal issue in this case is whether the School District provided Student with a FAPE. More specifically, whether the School District provided an appropriate IEP and BIP for Student and whether the program proposed by the School District in \*\*\* of 2017 is reasonably calculated to provide Student with the requisite meaningful educational benefit in the least restrictive environment. As detailed below, the School District designed an IEP and BIP to meet

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<sup>35</sup> TR. Vol. 1, p. 122-123.

<sup>36</sup> R.Ex. 13, p. 32-38.

<sup>37</sup> TR. Vol. 1, p. 79 and 100.

Student's unique, and complex, needs proposed a program to educate Student in the least restrictive environment, and met its obligation to provide a FAPE to Student.

### **1. Burden of Proof**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.<sup>38</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). Therefore the burden of proof is on Student to prove the IEP at issue was not reasonably calculated to enable Student to make educational progress given Student's unique, individual circumstances.

### **2. FAPE Overview**

A FAPE is special education, related services, and specially designed personalized instruction with sufficient support services to meet the unique needs of the child in order for the child to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982). While the IDEA guarantees only a "basic floor of opportunity," the IEP must nevertheless be specifically designed to meet Student's unique needs, supported by services that permit Student to benefit from the instruction. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. at 188-189.

Student has challenging and persistent behavior issues at school related to Student's \*\*\*. Student requires an educational program of \*\*\* individualized behavior interventions. The School District developed and implemented an IEP and BIP for Student that was based upon comprehensive evaluations and targeted Student's specific \*\*\* behaviors. In addition, the School District supported Student's program with supplemental services, including an inclusion teacher, a

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<sup>38</sup> There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 292 n. 4 (5th Cir. 2009).

campus BCBA, a token reward system and instructional modifications. In sum, the School District's program was reasonably calculated to provide Student with an educational benefit.

## **B. IEP**

In meeting the obligation to provide a FAPE a school district must have in effect an IEP for each child with a disability at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. A child's IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. *34 C.F.R. §§ 300.22, 300.323 (a)*.

The School District developed a comprehensive IEP for Student that addressed Student's behavioral and academic needs. Student's IEP included a BIP that targeted Student's four most challenging behaviors, detailed the interventions for staff to implement, and outlined a plan for positively reinforcing Student for displaying appropriate behavior. Student's IEP also addressed Student's academic deficits, detailed the modifications Student requires, and included needed supplemental services, such as a special education inclusion teacher to support Student.

To meet its substantive obligation under the IDEA, a school district must offer an IEP that is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. The adequacy of a given IEP turns on the unique circumstances of the student for whom it was created. *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, *137 S. Ct. 988 (2017)*. While the IEP need not be the best possible one nor must it be designed to maximize a student's potential, the school district must nevertheless provide the student with a meaningful educational benefit – one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. VP*, *582 F. 3d 576, 583 (5th Cir. 2009) cert. denied*, *559 U.S. 1007(2010)*.

The two part inquiry in this case is whether the IEP implemented by the School District during the 2017-18 school year and the IEP proposed at the \*\*\*, 2017 ARD committee meeting were reasonably calculated to provide the requisite educational benefit given Student's unique circumstances. *Rowley, 458 U.S. at 206-20; Andrew F. v. Douglas Cnty. Dist. RE-1, 137 S. Ct. 988 (2017)*. In this case, Student exhibits \*\*\* behaviors, stemming from Student's \*\*\* and Student's ADHD. Student's \*\*\* interfere with Student's ability to acquire academic skills and require \*\*\*, targeted interventions. During the 2017-18 school year, the School District designed and implemented both an IEP and a BIP that addressed Student's \*\*\* behavioral challenges. The IEP and BIP employed multiple strategies to address Student's needs in the general education setting. Student was provided with a special education inclusion teacher to support Student in the general education environment, to provide one-on-one instruction, and to support Student's general education teachers. The IEP in place during the 2017-18 school year was reasonably calculated to meet Student's unique needs.

It was not until the School District's significant efforts to meet Student's needs through an individualized IEP and BIP implemented in the general education setting were unsuccessful that the School District proposed a revised IEP and placement in a \*\*\* classroom. This revised IEP, proposed at the \*\*\*, 2017 ARD committee meeting, addresses Student's academic, behavioral and social needs. It provides for instruction in a setting with more staff and fewer students, allows for more targeted behavior intervention, \*\*\* and is designed to lead to the extinction of Student's challenging behaviors. The evidence demonstrated this proposed IEP is also reasonably calculated to meet Student's unique needs.

### **C. Application of the Four Factor Test**

To determine whether the School District's program was appropriate for Student, a hearing officer must determine whether the School District offered and provided a FAPE to

Student. The Fifth Circuit has articulated a four factor test to determine whether a Texas school district's program meets IDEA FAPE requirements. Those factors are:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and,
- Positive academic and non-academic benefits are demonstrated.

*Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

**1. The program is individualized on the basis of the student's assessment and performance**

Student's program was based upon the evaluations conducted by the School District, the outside FBA and Student's academic, behavioral, and social performance at school. The program addressed Student's academic deficits \*\*\*, contained intervention strategies for meeting Student's behavioral challenges and outlined a program for building Student's social skills. Student's proposed program in the \*\*\* classroom is designed to address Student's need for \*\*\* behavior intervention and to provide an environment in which Student's academic deficits can be more effectively addressed. The School District has provided a program that is individualized on the basis of Student's assessment and performance.

**2. Program is administered in the least restrictive environment**

The IDEA requires that students with disabilities be educated in general education settings with nondisabled students to the maximum extent appropriate. The IDEA has a strong

preference in favor of educating students with disabilities in general education settings with their nondisabled peers. However, if a school district cannot satisfactorily educate a student with a disability in the general education setting, then the school district may remove the student from the general education setting and place them in special education classes. 20 U.S.C. § 1412 (a)(5); 34 C.F.R. § 300.114(a) (1) (2) (i) (ii). This requirement of the IDEA is referred to as a school district's obligation to educate a student in the least restrictive environment (LRE). *Id.*

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. El Paso Ind. Sch. Dist.*, 874 F. 2d 1036, 1048 (5th Cir. 1989).

**D. Educating Student In General Education Settings with Supplemental Aids And Services**

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; 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.* In this case, Student's \*\*\*. The School District developed and implemented a detailed program of behavior intervention and academic support in the general education setting.

The School District provided a special education inclusion teacher to support Student's education in the general education setting, modified assignments and expectations for Student, gave the Student opportunities for \*\*\*, and modified the classroom behavior and discipline expectations for Student. Moreover, the School District developed a detailed BIP to assist Student in exercising appropriate behavior in the general education setting, assigned a BCBA to Student's campus to oversee implementation of the BIP and assist with intervention strategies, offered counselling to help Student develop social skills to be utilized in the general education classroom, and hired an outside BCBA to conduct a FBA for Student. Even with these extensive supplemental aids and services, Student was unable to make progress on Student's IEP and otherwise be successful in the general education setting.

The determination of whether the Student is receiving educational benefit while placed in the general education setting requires an evaluation of both the academic and nonacademic benefits. *Id.* At 1049. The evidence demonstrated Student's \*\*\* behavioral issues significantly inhibit Student's ability to receive academic instruction in the general education environment, are causing Student to have expanding academic deficits, and prohibit Student from making progress on Student's IEP goals. In addition, Student is receiving little nonacademic benefit in the general education setting, because Student's \*\*\*. Moreover, Student's social skill deficits limit Student's ability to have positive peer interactions.

It is not appropriate to educate a student in the general education setting when the student engages in disruptive behavior that significantly impairs the education of the other students in the general education setting. *Id.* In this case, the general education teacher has to regularly \*\*\*.

The evidence showed the School District made significant efforts to provide Student with supplemental aids and services and modify the curriculum for Student, but, even with these efforts, Student was unable to make progress on Student's IEP, received little, if any, educational benefit and caused considerable disruption to the education of the other students in the general education setting. In sum, Student cannot be appropriately educated in a general education setting.

**E. Mainstreaming Student To The Maximum Extent Appropriate**

Having determined that Student cannot be satisfactorily educated in the general education setting, it must next be determined whether the School District has mainstreamed Student to the maximum extent appropriate. In other words, whether the School District is providing Student with the maximum amount of appropriate interaction with nondisabled students. *Id.* at 1050. The School District's proposed placement continues to educate Student on a \*\*\* campus. In addition, Student will continue to attend Student's special area courses with nondisabled students and will have opportunities to interact with peers during \*\*\*. Given the severity of Student's disability, the School District's \*\*\*, 2017 proposed program and placement mainstreams Student to the maximum extent appropriate.

**1. The services are provided in a coordinated, collaborative manner by the key stakeholders**

Student's Mother was an active participant in Student's ARD committee meetings with her input being considered and she engaged in regular dialogue with multiple members of Student's education team at the School District. Student's general education teacher, Student's Special Education inclusion teacher, the campus BCBA, the School District behavior coordinator and the campus administrators all worked together to implement Student's program, analyze the effectiveness of the program, and to develop alternative strategies for addressing Student's



needs. The School District provided Student's program in a collaborative manner with Student's Mother and delivered Student's services in a coordinated manner utilizing multiple staff members.

## 2. Positive academic and non-academic benefits are demonstrated

Student has struggled to make academic, behavioral and social progress while being served in the general education environment. Student's behaviors are too \*\*\* to allow for significant progress in the general education setting. The School District's proposed placement in the \*\*\* classroom is reasonably calculated to allow Student to make academic progress, to receive \*\*\* behavior intervention, and to develop social skills. This proposed program is likely to lead to academic and nonacademic benefit for Student.

## VIII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993).
2. Petitioner did not meet Student's burden of proving Respondent failed to provide Student with FAPE during the 2017-18 school year. *Schaffer v. Weast*, *supra*; *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, *supra*; *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, *supra*; 34 C.F.R. §§ 300.1, 300.17.
3. Petitioner did not meet Student's burden of proving that the School District's proposed placement violated the LRE requirements. *Schaffer v. Weast*, *supra*; *Daniel R.R. v. El Paso Ind. Sch. Dist.*, *Supra*; *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, *supra*; *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, *supra*; 20 U.S.C. § 1412 (a) (5) (A); 34 C.F.R. §300.114(a) (1) (2) (i) (ii).

## IX. ORDERS

Based upon the foregoing findings of fact and conclusions of law it is ORDERED as follows:

1. Petitioner's requests for relief are **DENIED**
2. Respondent's request to implement the program and placement proposed in the \*\*\*, 2017 ARD committee meeting is **GRANTED**. And,
3. All other requests for relief not specifically stated in these Orders is hereby **DENIED**.

**SIGNED March 19, 2018.**



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**Steve Elliot**  
**Special Education Hearing Officer**  
**For the State of Texas**

#### **X. 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. *19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a) (b).*