

**DOCKET NO. 146-SE-0218**

<b>STUDENT, B/N/F PARENT, Petitioner</b>	§	<b>BEFORE A SPECIAL EDUCATION</b>
	§	
	§	
<b>v.</b>	§	<b>HEARING OFFICER FOR</b>
	§	
<b>KLEIN INDEPENDENT SCHOOL DISTRICT, 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 Klein Independent School District (“Respondent,” or “the school district” ) under the Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et. seq (IDEA) and its implementing state and federal regulations.

**A. Legal Representatives**

Student has been represented throughout this litigation by Student’s legal counsel, Toni Jones-Holley of The Jones Law Firm. The school district has been represented throughout this litigation by its legal counsel, Amy Tucker of Rogers, Morris and Grover, L.L.P.

**B. Resolution Session and Mediation**

The resolution session was continued twice at parent’s request. The parties met in a resolution session on March 9, 2018 but were unable to reach an agreement. The parties did not participate in mediation.

### C. Continuances

The hearing officer granted one continuance in this case, at Petitioner's request, to accommodate the availability of an expert witness. The due process hearing was continued from April 5, 2018 to April 20, 2018 with the decision extended for good cause from May 6, 2018 to May 21, 2018.

## II. DUE PROCESS HEARING

The due process hearing was conducted on April 20, 2018. Petitioner continued to be represented by Petitioner's legal counsel Toni Jones-Holley. Student's mother, \*\*\*, and \*\*\*, \*\*\*, also attended the hearing. Respondent continued to be represented by its legal counsel Amy Tucker. In addition, Dr. \*\*\*, Executive Director of Student Services, and \*\*\*, Curriculum Coordinator, attended the hearing as the school district's party representatives. The hearing was recorded and transcribed by a certified court reporter.

At the conclusion of the hearing the parties requested the record remain open in order to allow submission of written closing arguments. The parties requested a briefing deadline of May 21, 2018 - the existing decision due date. They also requested an extension of the decision due date to June 28, 2018, to allow the hearing officer time to complete a review of the record, conduct the requisite legal research, and to thoughtfully consider the written closing arguments in preparing the decision. The request was granted for good cause and the decision deadline was extended to June 28, 2018, in a post-hearing order issued on April 23, 2018.

## III. ISSUES

### A. Petitioner's Issues

Petitioner submitted the following issues:

1. Whether the school district's proposed placement for student in a \*\*\* classroom for reading is appropriate and the least restrictive environment (LRE); and

2. Whether the reading program proposed by the school district is appropriate for Student.

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

The school district contends the proposed change in services, specifically a new reading program to be delivered in a special education \*\*\* classroom, is appropriate for Student and the LRE in meeting Student's needs.

**IV. REQUESTED RELIEF**

Petitioner requests the following items of relief:

1. Maintain Student's placement for reading in a \*\*\* class;
2. Revise Student's Individualized Education Plan (IEP) and specifically formulate new IEP goals to replace goals Student has already mastered;
3. Provide Student with reading instruction delivered by a reading specialist in a setting other than a \*\*\* class;
4. Change the \*\*\* reading teacher delivering instruction to Student, or in the alternative, change Student's placement to another \*\*\* campus with \*\*\* classes; and
5. Modify the \*\*\* grade reading curriculum for Student.

**V. FINDINGS OF FACT**

1. During the 2016-17 school year, Student was a \*\*\* year-old \*\*\* grader eligible for special education services from the school district as a student with \*\*\* and a speech impairment in the area of \*\*\*.<sup>1</sup> Student has been diagnosed with \*\*\*, \*\*\*, \*\*\*, \*\*\* and \*\*\*.<sup>2</sup> In March 2017, Student was also identified as eligible for special education services as a student with an intellectual disability.<sup>3</sup>

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<sup>1</sup> Joint Exhibit 1, p. 2 (referred to hereafter as "J \_\_-\_\_."); J. 5-23.

<sup>2</sup> J. 5-4; J.-19.

<sup>3</sup> J. 1-1; J. 4-24.

2. Student lives with Student's mother \*\*\*.<sup>4</sup> \*\*\*.<sup>5</sup> At home Student is easygoing and compliant, gets along with the neighborhood children, and exhibits \*\*\* typical \*\*\* behavior with Student's \*\*\*. Student is also compassionate in Student's approach to difficult situations and adjusts well to new ideas.<sup>6</sup>
3. Over the years Student's parents provided Student with physical therapy (PT), occupational therapy (OT) and speech therapy through \*\*\*. \*\*\* recently discharged Student from OT and speech because Student no longer needed those services. \*\*\*.<sup>7</sup> Student's mother also provided Student a reading tutor.<sup>8</sup>
4. Prior to Student's enrollment in the school district, Student attended \*\*\* (\*\*\*) for \*\*\* and \*\*\* \*\*\*.<sup>9</sup> Student did not receive special education services until Student was evaluated in March 2015, at which time \*\*\* identified Student as eligible for special education as a student with an intellectual disability, \*\*\*, and speech impairment.<sup>10</sup> At \*\*\* Student received some special education inclusion support in the general education \*\*\* grade classroom.<sup>11</sup>
5. Student enrolled in the school district in August 2015 as a \*\*\* grader.<sup>12</sup> The school district completed a Full Individual Evaluation (FIE) on September \*\*\*, 2015. The purpose of the FIE was to gather additional data to determine Student's eligibility for special education services as a student with an intellectual disability, \*\*\*, and a speech impairment.<sup>13</sup> A multi-disciplinary team worked together to complete the 2015 FIE. The team included an educational diagnostician, the school nurse, a general education teacher, a special education teacher, and a speech/language pathologist.<sup>14</sup>
6. The FIE was also to determine Student's educational needs in the areas of cognitive achievement, adaptive behavior, and speech and to obtain medical documentation to confirm Student's \*\*\*. The additional assessment data from the FIE was used to determine the additions or modifications to special education and related services Student needed to meet Student's IEP goals and to participate, as appropriate, in the general

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<sup>4</sup> J. 5-3; J. 8-1; J. 7-5.

<sup>5</sup> J. 7-5; Transcript at 76-77 (referred to hereafter as "Tr. \_\_").

<sup>6</sup> J. 7-5.

<sup>7</sup> Tr. 80.

<sup>8</sup> Tr. 91.

<sup>9</sup> J. 5-3, 19; J. 8-1, 16,19,33,39.

<sup>10</sup> J. 5-19; J-8, 19-38.

<sup>11</sup> J. 5-20.

<sup>12</sup> J. 5-20.

<sup>13</sup> J. 5-1.

<sup>14</sup> J. 5-29.

curriculum.<sup>15</sup>

7. The 2015 FIE was a broad, comprehensive evaluation with information from Student's mother and teachers, health and medical information, standardized testing in the areas of cognition, academic achievement, and speech/language skills, and adaptive behavior assessments. The 2015 FIE included a review of prior evaluation data consisting of the \*\*\* FIE, PT and OT assessments, and speech/language assessments.
8. The 2015 FIE concluded Student met criteria for special education as a student with \*\*\* based on \*\*\* with \*\*\* delays and as a student with a speech impairment, specifically \*\*\*.<sup>16</sup>
9. Student scored in the low to very low range of cognitive functioning on a number of cognitive measures and sub-tests.<sup>17</sup> Overall, Student exhibits \*\*\* with the most significant impairments in long-term memory and working memory. Visual processing is a personal strength.<sup>18</sup>
10. Student's adaptive behavior was also assessed. Adaptive behavior refers primarily to the effectiveness with which Student copes with the natural and social demands of Student's environment.<sup>19</sup> Teacher and parent observations were used to measure Student's adaptive behavior and were inconsistent across settings. The regular education teacher's ratings were consistent with Student's cognitive testing scores. The special education teacher's ratings were reflective of Student's performance in a small group setting where Student could work on skills at a slower pace. In that regard, the global adaptive composite (GAC) score from the special education teacher fell within the average range as compared to the GAC score from the regular education teacher that fell within the extremely low range of functioning.<sup>20</sup>
11. Student's mother's ratings of Student's adaptive behavior were higher than both teacher ratings. She rated Student's adaptive behavior as average to superior in the home/community setting.<sup>21</sup> Student enjoyed \*\*\*. Student was also \*\*\*.<sup>22</sup>
12. Overall, Student's adaptive behavior scores were not consistent with Student's measured level of intelligence. The multi-disciplinary team concluded Student's cognitive

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<sup>15</sup> J. 5-1.

<sup>16</sup> J. 5-23-24.

<sup>17</sup> J. 5-11-14.

<sup>18</sup> J. 5-15.

<sup>19</sup> J. 5-15.

<sup>20</sup> J. 5-15-17.

<sup>21</sup> J. 5-17, 29.

<sup>22</sup> J. 5-3.

- functioning was related to Student's \*\*\* and likely to result in academic struggles across all areas, but that Student did not meet criteria for special education as a student with an intellectual disability.<sup>23</sup>
13. When Student enrolled in the school district in \*\*\* grade Student's reading and math skills were significantly below grade level expectations. Student was performing at a "\*\*\*\*" level.<sup>24</sup> In reading, Student scored in the lower extreme range for \*\*\*, \*\*\*, and \*\*\*. \*\*\*.<sup>25</sup> Student also scored in the lower extreme range in \*\*\* – a measure of Student's ability to \*\*\*, \*\*\*. Student also scored in the lower extreme range in \*\*\*.<sup>26</sup>
  14. In \*\*\* grade, Student scored in the below average range in math concepts and applications, i.e. mathematical reasoning and concepts as applied to meaningful problem solving. Student scored in the lower extreme range in math computation \*\*\*.<sup>27</sup>
  15. The 2015 FIE concluded that, as the demands of the classroom increase, Student's performance became less consistent. Student's ability to maintain focus on instruction impacted Student's ability to acquire basic academic skills and to build upon skills already learned. Student's cognitive scores consistently reflected global weaknesses, with the most significant deficits in short and long term memory. In addition, Student's delayed motor skills resulted in some struggles with the demands of the classroom. In sum, as a \*\*\* grader, Student was functioning at a \*\*\* level in all academic areas.<sup>28</sup>
  16. The 2015 FIE identified Student's strengths and weaknesses in reading, written expression, math, speech, and physical skills. A detailed set of recommendations were included for specific modifications of instructional content, pacing, methods, and materials Student needed to achieve and maintain satisfactory progress. Student continued to demonstrate a need for OT and speech therapy. The 2015 FIE did not make a specific recommendation regarding instructional setting, but instead deferred to an Admission, Review & Dismissal Committee (ARD) to determine the appropriate placement to facilitate implementation of Student's IEP.<sup>29</sup>
  17. The 2015 FIE recommended an instructional program in basic reading and spelling skills that is systematic in introduction, practice, and reinforcement of phonemic awareness skills, \*\*\* relationships, \*\*\*, syllabication rules, structured analysis, and spelling rules. Student needed skills presented in gradual steps from simple to complex with mastery required before introducing the next skill. Student needed practice assignments to

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<sup>23</sup> J. 5-17, 29.

<sup>24</sup> J. 5-20.

<sup>25</sup> J. 5-21.

<sup>26</sup> J. 5-21.

<sup>27</sup> J. 5-21.

<sup>28</sup> J. 5-22.

<sup>29</sup> J. 5-24-26.

incorporate previously learned skills in order to develop automaticity. \*\*\*.<sup>30</sup>

18. In February 2017, the ARD determined additional assessment was appropriate to re-visit the question of whether Student met criteria as a student with an intellectual disability. Student was now in \*\*\* grade. An Addendum Report to the 2015 FIE was prepared and issued on February \*\*\*, 2017.<sup>31</sup> The February 2017 FIE Addendum included a review of records by the educational diagnostician, a functional behavior assessment (FBA) conducted by a licensed specialist in school psychology (LSSP), adaptive behavior assessments by two of Student's general education teachers, two of Student's special education teachers, and by Student's mother, as well as cognitive and intellectual testing conducted by the educational diagnostician.<sup>32</sup>
19. Cognitive/intellectual testing measured Student's global intellectual ability, comprehension knowledge, long term retrieval, visual-spatial thinking, auditory processing, fluid reasoning, processing speed, and short-term memory. Non-verbal measures of cognitive skills were also included in the February 2017 FIE Addendum.<sup>33</sup>
20. The global intellectual ability score represents Student's ability underlying all intellectual performance and is often the best single-score predictor of overall school achievement and other life outcomes. Student's global intellectual ability score fell in the very low range of intelligence and is a valid estimate of Student's overall cognitive abilities. The February 2017 FIE Addendum noted those results were consistent with other previous assessment data.<sup>34</sup> A relative strength for Student is Student's ability to process information visually.<sup>35</sup>
21. The adaptive behavior component of the February 2017 FIE Addendum included assessment of a wide range of skills and identified a detailed set of Student's strengths and weaknesses in coping with the natural and social demands of Student's environment.<sup>36</sup> Student is able to meet most of the social and physical demands of Student's environment. However, Student struggles with conceptual demands in communication, functional academics, and self-direction. The data showed Student's adaptive behavior was consistent with Student's measured level of cognitive/intellectual functioning in the academic environment.<sup>37</sup>

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<sup>30</sup> J. 5-27.

<sup>31</sup> J. 4-1.

<sup>32</sup> J. 4-2-5.

<sup>33</sup> J. 4-3-4.

<sup>34</sup> J. 4-5.

<sup>35</sup> J. 4-3-4; Tr. 165.

<sup>36</sup> J. 4-5-12.

<sup>37</sup> J. 4-12; Tr. 165.

22. Student received instruction in a “pullout” reading program known as “\*\*\*” from a special education teacher in \*\*\* and \*\*\* grade.<sup>38</sup> \*\*\* is a \*\*\* program with \*\*\*. The instruction is \*\*\*.<sup>39</sup> When the special education teacher saw Student was continuing to struggle using the \*\*\* program she tried \*\*\*, another \*\*\* program, with Student. Although Student experienced some initial success with \*\*\*, Student’s short term memory deficits interfered with Student’s ability to maintain consistent progress.<sup>40</sup>
23. In December 2017, Student was still reading on a \*\*\* to \*\*\* level.<sup>41</sup> A phonics inventory administered in January 2017 showed that, as a \*\*\* grader, Student was functioning at a \*\*\* level in mastering \*\*\* skills. Student’s progress was slow and inconsistent and Student struggled to retain previously learned concepts.<sup>42</sup>
24. During the 2016-17 school year, Student was generally compliant and cooperative, came to class prepared with necessary materials, and was generally respectful of adults and classmates.<sup>43</sup> Student has many behavioral strengths. Student can complete some academic tasks when provided with a model to copy. Student wants to do well and likes being successful. Student responds well to verbal praise and works well with direct support and high structure.<sup>44</sup>
25. However, Student’s significant skill deficits also result in frustration at school. Although Student could complete some tasks, Student’s behavior was frequently disruptive to Student’s learning and the learning of others. Student struggled with following simple instructions and social cues to figure out what to do next. Student demands ongoing assistance from Student’s teachers and has difficulty occupying \*\*\*self while waiting for help. Student wants to do well, but struggles when working independently. Student does not consistently respond to verbal redirection or warnings to correct behavior.<sup>45</sup> Student interrupts lessons and when teachers are working with other students.<sup>46</sup>
26. Student often does not know what to write and does not understand what many of the class assignments require Student to do. When frustrated, Student may \*\*\*. Student struggles with simple directions. Student disturbs Student’s classmates. These behaviors worsen as the academic work becomes more challenging. Student has difficulty paying attention in whole group instruction. These behaviors are related to Student’s academic

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<sup>38</sup> Tr. 107-108.

<sup>39</sup> Tr. 109.

<sup>40</sup> Tr. 110-11.

<sup>41</sup> J. 17-2; J. 22-1; Tr. 112, 114.

<sup>42</sup> J. 4-15; Tr. 169.

<sup>43</sup> J. 7-6.

<sup>44</sup> J. 1-7.

<sup>45</sup> J. 4-17.

<sup>46</sup> J. 4-16.



skill deficits.<sup>47</sup>

27. The teachers used a positive reinforcement behavior management program that reinforces prosocial behaviors and minimizes attention to negative behaviors. Student is very responsive to verbal praise and likes to run errands for teachers. However, Student had difficulty keeping up with the reward system used in the classroom. Student is capable of working with direct support and when provided a high degree of structure.<sup>48</sup>
28. Student needed a Behavior Intervention Plan (BIP) to address frustration tolerance, emotional outbursts, and poor sustained attention and work effort. The February 2017 FIE Addendum identified the antecedents and consequences of these target behaviors as an aspect of the FBA.<sup>49</sup>
29. The February 2017 FIE Addendum confirmed Student has significantly sub-average intellectual functioning as measured by standardized, individually administered tests of cognitive ability.<sup>50</sup> Student exhibits deficits in functional academic skills and self-direction.<sup>51</sup> Functional academic skills are the basic skills that form the foundations for reading, writing, mathematics, and other skills needed for daily, independent functioning (\*\*\*)<sup>52</sup>. The February 2017 FIE Addendum confirmed Student met criteria for special education services as a student with an intellectual disability.<sup>53</sup>
30. In each instructional area, Student needs objectives specifically developed and taught at Student's current level of academic functioning. Vocabulary development and word knowledge play a key role in Student's reading comprehension. Student needs an emphasis on learning new vocabulary in the classroom. Student needs pre-reading activities appropriate to Student's age and instructional level before assigning reading on new topics. Student needs oral information to be paired with visual materials and samples. Student needs oral directions that are short and simple.<sup>54</sup>
31. Student also needs learning objectives focused on broad objectives and functional academic skills. Student needs to be provided with overlearning, repetition and review of concepts, with assignments broken into smaller, more manageable units.<sup>55</sup> Because Student has demonstrated difficulty \*\*\*, Student needs a \*\*\* approach as a focus to

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<sup>47</sup> J. 1-7; J.4-16.

<sup>48</sup> J. 4-17.

<sup>49</sup> J. 4-19-20.

<sup>50</sup> J. 4-20-21.

<sup>51</sup> J. 4-21.

<sup>52</sup> J. 4-8.

<sup>53</sup> J. 4-21.

<sup>54</sup> J.4-21

<sup>55</sup> J. 4-21.

teaching Student reading.<sup>56</sup>

32. Student made some progress learning \*\*\* in the \*\*\* reading program with an increase in the number of reading \*\*\*. There are \*\*\* total so Student still has many more \*\*\* to learn.<sup>57</sup> Student continues to have difficulty \*\*\* and struggles in particular with \*\*\* and \*\*\* skills.<sup>58</sup>
33. Educational placement impacts Student's behavior and Student's behavioral challenges are directly related to Student's academic challenges. Student is easily frustrated and highly prompt dependent – even when given relatively simple directions and tasks compared to Student's same age peers. Student does not have the skills, at this time, to engage in grade-level work. Student's frustration level and inability to sustain attention is not expected to improve without consideration of Student's educational setting and a set of accommodations and modifications related to Student's abilities.<sup>59</sup>
34. Student needs consistent classroom behavior management targeting on-task behavior using pre-taught strategies for handling frustration, task initiation, and sustaining work effort. Student needs a visual schedule to complete multi-step tasks and gain independence with routine tasks. Student needs visual reminders to complete tasks, pre-teaching, prompts, and reinforcement to sustain work effort and attention. Student needs an immediate positive reinforcement system that allows Student to earn positive reinforcement throughout the school day.<sup>60</sup>
35. An ARD convened on March \*\*\*, 2017 for Student's annual review and to review and discuss the results of the February 2017 FIE Addendum, including the FBA, and to consider a possible change in educational placement. The ARD agreed on a proposed BIP based on the results of the FBA.<sup>61</sup> The BIP targeted Student's needs to overcome frustration, seek help in an appropriate manner, and increase Student's attention to task.<sup>62</sup> The ARD also agreed on the set of proposed objective and measureable IEP goals in speech therapy, Reading, \*\*\*, Math, \*\*\*, and Behavior that met Student's unique needs.<sup>63</sup>
36. During the 2016-17 school year Student received instruction in \*\*\*, Reading and Math in both general education and special education classrooms. Student received instruction in

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<sup>56</sup> J. 4-22; Tr. 166-67.

<sup>57</sup> Tr. 108, 118.

<sup>58</sup> Tr. 109.

<sup>59</sup> J. 4-22.

<sup>60</sup> J. 4-22-23.

<sup>61</sup> J. 1-1, 26.

<sup>62</sup> J. 1-16-17.

<sup>63</sup> J. 10-17, 27.

- \*\*\*, \*\*\*, and \*\*\* in a general education setting. Student received \*\*\* hours/week of Reading/\*\*\* instruction in a resource class, \*\*\* hours/week of co-teaching in Reading/\*\*\*, \*\*\* hours/week of Math in a resource class, \*\*\* hours/week of support assistance in Math, speech therapy for \*\*\* minutes/week for \*\*\* out of every 9 weeks, and \*\*\* minutes/week of OT for \*\*\* weeks out of every 9 weeks. In sum, Student received instruction in general education classes for \*\*\* hours/week and in special education classes for \*\*\*/hours/week during the 2016-17 school year.<sup>64</sup>
37. At the March 2017 ARD school staff initially recommended a change in placement from the current mix of general education and resource classes to a self-contained special education \*\*\* class.<sup>65</sup> The \*\*\* class utilizes a cross-curricular program with instruction in Reading, \*\*\* and Math tied together. For example, what the students learn in reading can be translated into a science experiment. The instruction is differentiated to the needs of the individual student. The curriculum used in the \*\*\* classroom is scientifically-based and research-driven.<sup>66</sup>
38. The \*\*\* classroom uses a reading program called \*\*\* – which is also scientifically-based on research with students with cognitive disabilities, learning disabilities, and autism.<sup>67</sup> The \*\*\* reading program is organized into different levels. The First Level focuses on \*\*\*.<sup>68</sup>
39. The \*\*\* reading lessons are provided one-on-one in the \*\*\* classroom by a certified teacher or a paraprofessional trained in the program. Other instructional components include: \*\*\*.<sup>69</sup> The lesson cycle is consistent throughout the program.<sup>70</sup>
40. In the Second Level the \*\*\*. Level three is \*\*\*. Comprehension and fluency are built into the program.<sup>71</sup> The school district has seen good results using the \*\*\* reading program. Under the \*\*\* program students who were \*\*\* made two to three grades of growth in their ability to read.<sup>72</sup>
41. At the March 2017 ARD, Student's mother disagreed with the proposed placement in the \*\*\* class. The parties agreed to recess and reconvene. The ARD reconvened on April \*\*\*, 2017. Parental observation of the \*\*\* classroom was agreed to and the school

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<sup>64</sup> J. 1-23-24

<sup>65</sup> J. 1-28; Tr. 21-24.

<sup>66</sup> Tr. 135-37.

<sup>67</sup> Tr. 137.

<sup>68</sup> Tr. 138, 140.

<sup>69</sup> Tr. 138, 140.

<sup>70</sup> J. 18; Tr. 139.

<sup>71</sup> Tr. 139.

<sup>72</sup> Tr. 140.

- district offered a number of dates and times. The parent ultimately did not observe the \*\*\* classroom on any of the proposed dates and times.<sup>73</sup>
42. While the ARD was in recess, the school district reviewed the schedule of services proposed at the March \*\*\*, 2017 ARD. At the April \*\*\*, 2017 ARD the school district offered additional opportunities for inclusion time in a less restrictive setting. The revised proposed schedule was: \*\*\* hours/week in general education classes (\*\*\*) ; \*\*\* hours/week in the special education \*\*\* classroom; support assistance; speech therapy for \*\*\* minutes/week for \*\*\* out of every 9 weeks, and OT for \*\*\* minutes/week for \*\*\* weeks of every 9 weeks. Both general education and special education teachers would give Student Student's grades in \*\*\* and \*\*\*.<sup>74</sup>
43. Student's mother continued to disagree with the proposed change in special education classes from the resource room to the \*\*\* classroom. She declined to observe the \*\*\* classroom. She also disagreed with the school district's identification of Student as a student with an intellectual disability. At the April 2017 ARD she stated her disagreement with the school district's evaluations and requested an Independent Educational Evaluation (IEE). The school district agreed to a parental request to delay the \*\*\* class placement until the parties had an opportunity to review and discuss the IEE.
44. The April 2017 ARD reached agreement on how the state mandated State of Texas Assessment of Academic Readiness (STAAR) assessment would be administered and on IEP goals for \*\*\* and \*\*\* instruction in the general education classroom.<sup>75</sup> The parties agreed to convene another ARD before the upcoming 2017-18 school year to review and discuss the results of the IEE. An ARD for the end of the 2017-18 school year was also planned to address Student's failing grades and to determine retention or promotion.<sup>76</sup>
45. An end of the year ARD convened on May \*\*\*, 2017. Student's mother participated by phone. By May 2017, Student had not met grade level passing standards for \*\*\* grade despite implementation of special education support and accommodations. Student's final grades were: Reading (\*\*\*) , \*\*\* (\*\*\*) , \*\*\* (\*\*\*) , Math (\*\*\*) , \*\*\* (\*\*\*) , and \*\*\* (\*\*\*) . Despite these grades, the ARD agreed Student should be promoted to \*\*\* grade with continued special education support.<sup>77</sup>
46. Another ARD convened on August \*\*\*, 2017 to continue the discussion of the proposed change in the instructional setting from resource room to the \*\*\* classroom. The IEE

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<sup>73</sup> J. 1-28.

<sup>74</sup> J. 1-28.

<sup>75</sup> J. 1-28; J. 19-2-3.

<sup>76</sup> J. 1-28-29.

<sup>77</sup> J. 3-1-3.

- was pending at this point.<sup>78</sup> By this time Student's functional academic levels were more than \*\*\* grade levels below Student's same age peers. The \*\*\* classroom teacher explained the program and how she works with her students to improve their reading skills. Reading is taught on each student's appropriate functional academic level. Student's mother continued to disagree with the proposed placement and voiced concerns that once Student was placed in the \*\*\* class Student would never exit from it.<sup>79</sup>
47. Student's mother was also highly skeptical of the accuracy of school district assessments based on a prior negative experience in another school district. Student's mother was unwilling to accept the school district's assessment results until she received a second opinion from the IEE.<sup>80</sup>
48. At the August 2017 ARD the school district proposed the following schedule of services for the 2017-18 school year: \*\*\* hours/week in the \*\*\* classroom for Reading/\*\*\*, and Math; \*\*\* hours/week in general education for \*\*\*, and \*\*\*. The proposed schedule of services also included special education support/facilitation in \*\*\* and \*\*\*, speech therapy for \*\*\* minutes/week for \*\*\* out of every 9 weeks, and OT for \*\*\* minutes/week for \*\*\* weeks out of every 9 weeks. Student's mother continued to disagree with the proposal to provide Student's Reading/\*\*\*, and Math instruction in the \*\*\* classroom.<sup>81</sup> The ARD agreed to reconvene on September \*\*\*, 2017 to review and discuss the IEE.<sup>82</sup>
49. The IEE was completed and a report issued on September \*\*\*, 2017 by an independent educational diagnostician.<sup>83</sup> However, due to Hurricane Harvey, the ARD was unable to convene in September 2017 as planned. The IEE evaluator met with school district staff and Student's mother on October \*\*\*, 2017 to review the results of the IEE. A new ARD date in December 2017 had to be rescheduled because Student's mother \*\*\*. The ARD finally reconvened on February \*\*\*, 2018. At the February 2018 ARD the school district's lead diagnostician summarized the results of the IEE including IQ testing that was consistent with previous IQ measures.<sup>84</sup>
50. The IEE evaluator agreed with the school district's conclusion that Student met criteria for special education services as a student with an intellectual disability.<sup>85</sup> Student's cognitive deficits are separate from Student's \*\*\*, \*\*\*. It does not automatically cause

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<sup>78</sup> J. 2-1.

<sup>79</sup> J. 2-2.

<sup>80</sup> J. 2-2.

<sup>81</sup> J. 2-2-3.

<sup>82</sup> J. 2-3.

<sup>83</sup> J. 7-1-2.

<sup>84</sup> J. 2-3

<sup>85</sup> J. 2-3; J. 7-18.

deficits in cognitive growth or development.<sup>86</sup>

51. The school district proposed a slightly revised schedule of services for the 2017-18 school year at the February 2018 ARD: \*\*\* hours/week in general education (\*\*\*); Resource Math for \*\*\* hours/week; \*\*\* hours/week in the \*\*\* classroom for all English/\*\*\* and Reading instruction; support facilitation in Reading/\*\*\*, \*\*\*, and Math; speech therapy for \*\*\* minutes/week for \*\*\* out of every 9 weeks; and OT for \*\*\* minutes/week for \*\*\* weeks out of every 9 weeks.<sup>87</sup>
52. The IEP proposed at the February 2018 was the same IEP developed at the March 2017 ARD and implemented thereafter with some additional accommodations for Math, \*\*\*, and \*\*\* recommended by the IEE. The IEP included objective and measureable goals for speech therapy, Reading, \*\*\*, Math, \*\*\*, \*\*\*, and Behavior/Social Skills.<sup>88</sup>
53. The February 2018 ARD reviewed Student's progress. Student's mother shared information about a private reading program to be implemented over the course of 13 weeks. The books Student's mother shared from the private reading program were on the same level as the reading materials being used at school.<sup>89</sup>
54. Student's mother continued to adamantly oppose the proposed placement in the \*\*\* class and was concerned the placement would damage Student's self-esteem. She expressed her concerns that students in the \*\*\* classroom may be \*\*\*.<sup>90</sup> Student's mother believes the \*\*\* classroom will not be sufficiently challenging for Student and Student will not be engaged in active academic learning.<sup>91</sup>
55. Student's Reading and Math IEP goals are written significantly below grade level. Although Student is making some progress on the IEP goals Student is not capable of being successful in \*\*\* grade classroom. Student was not successful in the general education classroom with resource support and needs additional support in a special education classroom. At the time of the February 2018 ARD Student's grades were: \*\*\* (\*\*\*), Reading (\*\*\*), Math (\*\*\*), \*\*\* (\*\*\*), and \*\*\* (\*\*\*).<sup>92</sup> The February 2018 ARD ended in non-consensus on the school district's proposals to increase instructional time for Reading and Math in the \*\*\* class and implement the \*\*\* reading program.<sup>93</sup>

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<sup>86</sup> J. 7-18-19.

<sup>87</sup> J. 2-13.

<sup>88</sup> J. 1-10-16, 28; J. 2-6-12, 19.

<sup>89</sup> J. 2-3.

<sup>90</sup> J. 2-4, 18, 20-21; Tr. 99-100.

<sup>91</sup> Tr. 95, 100-101.

<sup>92</sup> J. 2-4.

<sup>93</sup> J. 2-3-4, 19.

56. Student can be more successful in a very small group in the \*\*\* classroom. Student will be working on Student's instructional level, receive more teacher attention, and is likely to experience far less frustration than Student does in Student's current program in the resource class. Student is less likely to be distracted and more likely to be able to sustain working on assignments.<sup>94</sup> Student's special education teacher believes Student has good ideas and she wants the best for Student, but Student needs more attention than what she can give Student in the resource setting.<sup>95</sup>
57. The adult to student ratio is much lower in the \*\*\* classroom than in the resource class or general education classes. The teachers in the \*\*\* classroom receive special training in delivering both the \*\*\* reading and the \*\*\*. The structural supports inherent in the \*\*\* classroom are beneficial for Student – for example, the \*\*\* classroom includes a lot of visual supports as recommended by the IEE.<sup>96</sup>
58. Student was a \*\*\* grader during the 2017-18 school year. A \*\*\* to measure Student's \*\*\* was administered periodically throughout the school year. Student scored 100% in \*\*\*, and showed relative strength in \*\*\*, but performed less well on the use of \*\*\* overall. The \*\*\* administered in September, October, and December 2017 determined Student as a “\*\*\*.” This designation means Student needs instruction in \*\*\*.<sup>97</sup>
59. As a “\*\*\*” Student continued to struggle with \*\*\*.<sup>98</sup> Students with intellectual disabilities often exhibit strengths in their ability to read based on a \*\*\* approach. However, some \*\*\* skills involve working memory capacity that may be beyond the student's ability.<sup>99</sup>
60. The IEE recommended systematic reading instruction with a focus on \*\*\* as opposed to a whole language approach.<sup>100</sup> However, the use of a \*\*\* approach to teach Student reading is appropriate due to Student's relative strength in processing visually.<sup>101</sup> Student has deficits in processing speed and working memory. Activities associated with \*\*\* require the use of working memory and the process of \*\*\* is very difficult for Student. For students with intellectual disabilities, a more holistic approach to teaching reading tends to be more effective with lots of built in repetition and drill.<sup>102</sup>

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<sup>94</sup> Tr. 115-16.

<sup>95</sup> Tr. 116.

<sup>96</sup> J. 7-20; Tr. 176-177.

<sup>97</sup> J. 11; Tr.163, 169.

<sup>98</sup> Tr. 164.

<sup>99</sup> Tr. 165.

<sup>100</sup> J. 7-19.

<sup>101</sup> Tr. 165-166.

<sup>102</sup> Tr. 166.

61. The \*\*\* reading program used in the \*\*\* classroom uses the \*\*\* based reading approach.<sup>103</sup> The research supports use of the \*\*\* based reading approach as most effective for students with intellectual disabilities. The \*\*\* approach begins with building a strong \*\*\* base and then slowly spirals upward with lots of repetition as \*\*\* skills, are slowly introduced with lots of practice.<sup>104</sup> An integral component of Student's \*\*\*, \*\*\* grade, and \*\*\* grade curriculum has been the explicit use of systematic \*\*\* reading instruction. Although Student has not made much progress with the \*\*\* methodology Student has increased Student's \*\*\* over time.<sup>105</sup>
62. The \*\*\* special education campus coordinator has \*\*\* years of experience as an educator, is a former \*\*\* teacher in the school district, served as a case manager and diagnostician for \*\*\* years, and for the past \*\*\* years served as the special education campus coordinator. In this role she oversees \*\*\* programs and \*\*\* programs. The \*\*\* special education campus coordinator supports the use of a \*\*\* based methodology for Student and placement in the \*\*\* class for core academics.<sup>106</sup>
63. The curriculum coordinator for the school district holds a teaching certificate in special education, a license as an educational diagnostician, has \*\*\* years of experience as an educator, a Master's Degree in Special Education, and a doctoral degree in Literacy with a focus on literacy for children with special needs.<sup>107</sup> The curriculum coordinator supports the use of a \*\*\* based methodology for Student and placement in the \*\*\* classroom.<sup>108</sup>
64. Student's mother enrolled Student in a private reading program at parental expense beginning in October 2017.<sup>109</sup> After an initial assessment the private reading program focused on the development of \*\*\*.<sup>110</sup> At the time of the due process hearing, Student had completed \*\*\* with the private reading provider.<sup>111</sup> The private reading program includes reinforcement activities that Student's mother works on with Student at home.<sup>112</sup> Student's mother is invested in the private reading program and committed to continuing to provide Student "whatever is in Student's best interest."<sup>113</sup>

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<sup>103</sup> Tr. 166.

<sup>104</sup> Tr. 167, 170, 174.

<sup>105</sup> J. 11; J. 14-1; J. 19-1-2; J. 20; Tr. 118, 168-169, 170, 173.

<sup>106</sup> Tr. 130-31, 135-36, 140.

<sup>107</sup> Respondent's Exhibit 1 (referred to hereafter as "R. \_\_\_"); Tr. 161.

<sup>108</sup> Tr. 165-166, 169-170.

<sup>109</sup> Petitioner's Exhibit 1, p. 5 (referred to hereafter as "P. 1\_\_\_"); Tr. 55-56, 81.

<sup>110</sup> Tr. 61.

<sup>111</sup> Tr. 64.

<sup>112</sup> Tr. 69-70, 71, 82-83.

<sup>113</sup> Tr. 81, 83, 94.



65. Student's mother feels Student can learn and the school district just "gave up" on Student. She sees Student as very smart and a good kid. Student does Student's work and what is asked of Student.<sup>114</sup> Student's mother disagrees with the school district's identification of Student as a student with an intellectual disability. In her view, Student's difficulty learning to read, rather than an intellectual disability, is Student's problem.<sup>115</sup>

## 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)*. Under the IDEA a FAPE must be available to all children with disabilities residing within the jurisdictional boundaries of a school district between the ages of 3 and 21. *34 C.F.R. § 300.101 (a)*. There is no dispute that Student is a child with a disability residing within the school district's jurisdiction and the school district has the duty to serve Student under the IDEA.

A FAPE is special education, related services, and specially designed instruction that meets the needs of the child in order 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); Rowley v. Bd. of Educ. of Hendrick Hudson Central Sch. Dist., 458 U.S. 176, 188-189, 200-201, 203-204 (1982)*. The 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, 999 (2017)*.

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<sup>114</sup> Tr. 89.

<sup>115</sup> Tr. 94.

The seminal issue in this case is whether the school district's proposal to implement a \*\*\* reading program and placement in a \*\*\* class for reading and math instruction is reasonably calculated to provide Student with a FAPE in the LRE. I conclude the proposed reading program, as the educator's chosen methodology, is appropriate for Student and placement in the special education \*\*\* classroom for reading and math instruction is also appropriate and the least restrictive environment for Student within the meaning of the IDEA.

## **B. Burden of Proof**

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.3d 127, 131 (5th Cir. 1993). 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). Therefore, the burden of proof in this case is on Petitioner. *Schaffer*, 546 U.S. at 62.

## **C. Methodology**

The dispute here is essentially a methodological one. Student's mother disagrees with the school district's proposal to change the focus of Student's reading instruction from a \*\*\* approach to a holistic approach with an emphasis on the \*\*\*. Petitioner argues Student is making progress in Student's \*\*\* private reading program and the school district should incorporate lessons from the private reading program into Student's school day.

Deference in the choice of methodology is given to the judgment of professional educators. Parents, no matter how well intentioned, do not have a right under IDEA to compel a school district to provide a specific program or employ a specific methodology in providing special education. *Lachman v. Illinois State Bd. of Educ.*, 852 F. 2d 290, 297(7th Cir. 1988). The parental right to provide meaningful input into the development of a student's IEP is not the right to dictate the outcome. *White ex rel White v. Ascension Parish Sch. Bd.*, 343 F. 3d 373,

380 (5th Cir. 2003).

The school district's curriculum coordinator, who was a highly credible, well-qualified witness, explained the research supports the school district's methodological choice of reading programs – especially in light of the incremental, slow progress Student made over the past few years in mastering \*\*\* despite the systematic \*\*\* reading instruction Student has received since August 2015. The school district's special education campus coordinator, a credible, experienced educator, also supports the proposed reading program for Student in the \*\*\* classroom. The evidence showed that Student remains at a \*\*\* level when compared to Student's same age peers in the use of \*\*\* for \*\*\*. That method has not proven to be particularly effective for Student and the evidence shows Student is beginning to experience some distress in school when faced with certain academic demands.

The testimony of the private reading provider was somewhat convoluted and confusing and, although interesting, was not persuasive enough to overcome the presumption that the methodology selected by the educators will benefit Student. *Todd L.*, 999 F. 2d at 129; *White*, 343 F. 3d at 377; *C.G. by and through Keith G. v. Waller Indep. Sch. Dist.*, 697 Fed. Appx. 816, 818 (5th Cir. 2017). Furthermore, the private reading provider has a pecuniary interest in advocating for the use of Student's program. The evidence showed Student may be making some progress in Student's private reading program, attributable in part to the dedicated efforts of both Student's mother and Student's own desire to succeed. However, the preponderance of the evidence showed the use of a \*\*\* approach to teaching reading has not been particularly effective for Student and a \*\*\* approach, supported by the research, is now appropriate.

Although Student's mother is absolutely entitled to provide her child with whatever supports, outside instruction, and reinforcements at home she deems are helpful to Student, the law does not compel the school district to employ those preferred instructional strategies or methodologies in implementing Student's IEP. *Lachman v. Illinois State Bd. of Educ.*, *supra*. Student's mother is committed to providing her child whatever is in Student's "best interest." However, the Student's "best interest" is not the legal standard under the IDEA nor does the IDEA require the school district to "maximize" Student's potential. Instead, the IDEA requires

the program offered is reasonably calculated to provide Student with a meaningful educational benefit given Student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. at 198, 201; *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1.*, 137 S. Ct. at 999.

The evidence showed the school district's proposed new reading program will not abandon teaching \*\*\* skills, but will instead utilize Student's relative strengths as a visual learner by building a foundation of \*\*\* through practice and repetition, and weaving \*\*\* into the instruction at an appropriate pace in light of Student's processing deficits.

Student's mother insists Student can learn. The school district agrees Student can learn. Towards that end, and in the professional judgment of the educators, the proposed reading program at issue is a more effective method of teaching reading to Student. The law defers the choice of an effective reading program to the educators where, as here, the methodological choice is based on the research, Student's own educational history, and Student's assessed strengths and weaknesses. The proposed reading program is therefore reasonably calculated to provide Student with the requisite meaningful benefit in light of Student's unique circumstances. *Id.*

#### **D. Least Restrictive Environment**

Petitioner also disagrees with the school district's proposal to place Student in a \*\*\* special education class for the purpose of delivering the new reading program and math instruction. Petitioner argues placement in the \*\*\* class is not the LRE for Student. Instead, Petitioner contends Petitioner should continue to receive instruction in the general education classroom with pullout resource room instruction.

The IDEA requires, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. Special classes, special schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of the child is such that education in regular classes with supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. § 1412 (a) (5);

*34 C.F.R. §300.114(a) (1) (2) (i) (ii).*

A student with a disability must be instructed in accordance with the student's IEP in the LRE as determined by the ARD committee. *34 C.F.R. § 300.320 (a) (5); 19 Tex. Admin. Code § 89.1055 (a).* Instructional arrangements and settings are based on the individual needs and the IEPs of the student. Instructional arrangements in Texas include both resource rooms and self-contained special education classrooms. *19 Tex. Admin. Code § 89.63 (c)(5)(6).* The proposed change in placement in dispute involves these two instructional arrangements.

There is no real disagreement between the parties that the nature of Student's disabilities requires some portion of Student's school day in a special education setting. Student receives \*\*\* and \*\*\* instruction in the general education classroom with some special education support. Student attends \*\*\* in general education classes and \*\*\* with Student's same age peers. This school year Student is in a general education \*\*\*. The proposed IEP at issue provides Student with the opportunity to be educated to the maximum appropriate with Student's same age peers. *34 C.F.R. § 300.114(a)(2)(i).*

The proposed program at issue includes instruction in the core academics of Reading, \*\*\* and Math in the \*\*\* special education classroom for a few more hours per week than Student's current schedule of services. The evidence showed Student needs a smaller teacher to student ratio where Student will receive greater instructional attention, one-on-one reading instruction, a less distracting instructional environment, and the benefit of a \*\*\* to reinforce reading, language and math skills. The \*\*\* classroom includes these features.

In this jurisdiction there is a flexible, two part test to determine whether a student's removal from the regular education environment is appropriate. *Daniel R.R. v. State Bd. of Educ.*, 874 F. 2d 1036, 1045 (5th Cir. 1989); *R.H. v. Plano Indep. Sch. Dist.*, 607 F. 3d 1003, 1012-13 (5th Cir. 2010). The first prong of the test asks whether education in the regular classroom, with the use of supplementary aids and services can be achieved satisfactorily for the student. The second prong of the test asks, if the student cannot achieve in the regular

classroom, whether the school nevertheless mainstreamed the student to the maximum extent appropriate. When education in the regular classroom cannot meet the student's unique needs the presumption in favor of mainstreaming is overcome. *Daniel R.R.*, 874 F. 2d at 1045.

The IDEA's mainstreaming preference is broad, but not limitless. The school district is not required to provide the student with every conceivable supplementary aid or service. The analysis must be an individualized, fact-specific inquiry including careful examination of the nature and severity of the child's abilities, disabilities, and, needs *and* the school district's response to the student's needs. *Id.*

There are a number of factors to consider in making the LRE determination although no one factor is dispositive. Factors that may be considered include: (i) the nature and severity of the student's disabilities; (ii) the student's academic achievement; (iii) the non-academic benefits of regular classroom placement; (iv) the overall experience in the mainstreamed environment balancing the benefits of regular education and special education to the student; and, (v) the effect of the student's presence on the regular class.

In considering the effect of the student's presence in the regular classroom there are two questions to be addressed: (i) whether the student's behavior is so disruptive in the regular classroom that the education of the other students is significantly impaired; and (ii) whether the student requires so much of the teacher's attention that the rest of the class suffers. If so, the balance tips in favor of placing the student in special education. *Daniel R.R.*, 874 F. 2d at 1049.

Applying the Fifth Circuit's test to this case leads to the conclusion Student's LRE is placement in the mix of general education and special education \*\*\* classrooms proposed by the school district, most recently at the February 2018 ARD. First, the evidence showed that the nature and severity of Student's cognitive challenges require a more intensive special education program than what Student received last school year. The assessment data, including school district assessments and the IEE, confirm that processing and retaining information is quite challenging for Student. Compared to same age peers Student exhibits fairly significant \*\*\*.

Second, the evidence showed that although Student made some progress in meeting IEP goals Student is significantly behind Student's same age peers in terms of Student's functional academic performance. Despite Student's best efforts and desire to achieve Student is struggling to keep up. Third, there is no real dispute Student receives non-academic benefits from interacting and learning along with Student's non-disabled peers. Indeed, the proposed program in dispute provides many opportunities to do so and, in fact, more hours each week are to be spent in regular classes than in the special education \*\*\* class. Fourth, the proposed program strikes the requisite balance between the overall benefits Student derives from the mainstreaming opportunities in general education classes with the specialized instruction uniquely tailored to meet Student's needs in the special education \*\*\* classroom.

Fifth, the evidence shows Student's frustration in trying to keep up with Student's regular class peers is beginning to disrupt Student's own learning and the learning of others. Student's behavioral goals address Student's needs to cope with Student's frustration level when faced with difficult tasks and exert a more sustained productive effort in Student's schoolwork. The credible evidence demonstrates these behaviors are closely tied to Student's difficulties trying to complete academic work that is simply too difficult for Student. The evidence showed Student needs and seeks a very high level of teacher attention and, when Student does not receive it, Student's behavior can become disruptive to the detriment of Student's classmates. The evidence showed Student's need for teacher attention is so high that Student becomes frustrated when the teacher is helping other students.

When these factors are considered as a whole, the balance tips towards placement in the \*\*\* special education classroom for the core academic classes of Reading/\*\*\* and Math as Student's LRE. *Daniel R.R., supra.*

#### **E. Identification as a Student With an Intellectual Disability**

Student's mother disagrees with the proposed placement because she also disagrees with the identification of Student as a student with an intellectual disability. The credible evidence demonstrates Student meets IDEA criteria as a student with an intellectual disability. *34 C.F.R.*

§ 300.8(b)(6). This classification does not mean Student cannot learn or that anyone, including school personnel, should lower their expectations as to what Student has the potential to accomplish.

Instead, this classification merely corroborates what Student's educational and assessment history confirms - that Student has certain cognitive challenges in the way Student processes and retains information. The classification simply supports Student's need for special education in the form of specialized instruction to accommodate the way Student learns and retains learned material. The evidence also showed Student has many strengths and is deeply loved and supported by Student's family. Student's teachers share Student's mother's goal that Student will be successful and make progress at school. It would be productive for the parties to work together to find ways Student's mother can reinforce at home what is being taught at school.

## VII. CONCLUSIONS OF LAW

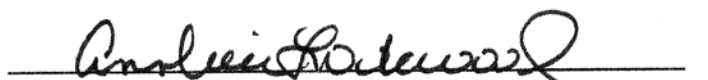
1. Petitioner meets the criteria under the IDEA as a student with an intellectual disability. *34 C.F.R. § 300.8 (b)(6)*.
2. Petitioner did not meet Petitioner's burden of proof as the party challenging the IEP. *Schaffer ex rel Schaffer v. Weast, 546 U.S. 49, 62 (2005)*. The proposed reading program is reasonably calculated to provide Petitioner with a meaningful, educational benefit in light of Petitioner's unique circumstances. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982)*; *Andrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist., RE-1, 137 S. Ct. 988 (2017)*.
3. Deference in the choice of methodology is given to the judgment of professional educators. Parents do not have a right under IDEA to compel a school district to provide a specific program or employ a specific methodology in providing special education. *Lachman v. Illinois State Bd. of Educ., 852 F. 2d 290, 297 (7th Cir. 1988)*; *White ex rel White v. Ascension Parish Sch. Bd., 343 F. 3d 373, 377 (5th Cir. 2003)*.
4. Respondent's proposed placement for providing Petitioner the Reading/\*\*\* and Math instruction in the special education \*\*\* classroom is the least restrictive environment for Petitioner to meet Petitioner's unique needs. *Daniel R.R. v. State Bd. of Educ., 874 F. 2d 1036, 1049 (5th Cir. 1989)*; *20 U.S.C. § 1412(a) (5)*; *34 C.F.R. § 300.114 (a)*.



**VIII. ORDERS**

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**. All other requests for relief not specifically stated in these Orders are hereby **DENIED**.

**SIGNED June 25, 2018.**

  
Ann Vevier Lockwood  
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); 19 Tex. Admin. Code Sec. 89.1185 (n).