

DOCKET NO. 179-SE-0317

**STUDENT B/N/F PARENT and
PARENT,
Petitioner**

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BEFORE A SPECIAL EDUCATION

v.

**CLEAR CREEK INDEPENDENT
SCHOOL DISTRICT,
Respondent**

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

*** (Student)b/n/f *** and*** (collectively, Petitioner) requested an impartial due process hearing(the Complaint) on March 31, 2017, alleging claims under the Individuals with Disabilities Education Act(IDEA). The respondent to the Complaint is the Clear Creek Independent School District (Respondent/the District)The District filed its response to the Complaint on April 4, 2017.

Petitioner alleges that during the 2015-16 and 2016-2017 school years, the District failed to provide Student with a free, appropriate public education (FAPE) and failed to propose Student's placement in the least restrictive environment (LRE) Petitioner further alleges that the District failed to conduct an Assistive Technology (AT) evaluation during the 2016-17 school year The District denies Petitioner's allegations.

The hearing officer finds Petitioner did not meet its burden to prove that the District failed to provide Student with FAPE and that the District should have conducted an AT evaluation however,egu-1.9(n1.p

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Petitioner requests the following relief:

1. Compensatory educational services, in the form of 180 hours of tutoring in academic subjects embraced by Petitioner's current IEP goals by a private individual with experience and training in teaching students with autism spectrum disorder and **§1008 Tc 3.036 0 Td-31.8 T1.

Regarding Student's *** score, Student was in the borderline range, although Student's was below average.¹¹ *** refers to the degree a student is ***.¹² The 2010 FIE did not show that Student had an ID.

6. Student did not respond to standardization procedures during the May ***, 2011 FIE (2011 e FIE) due to Student's autism so modifications to the *Leiter International Performance Scale-Revised (Leiter-R)* were made. Consequently, standard scores could not be reported, but it was noted that Student's ***.¹⁴

7. In the March ***, 2014 FIE (2014 FIE) Student's standard score on the

*** Grade: 2014-2015 School Year

10. The SLL, the District's special education plan, consists of three programs: ***, ****(*), and ***. The two programs issue as the *** and *** programs.²¹ The SLL programs are not age based. Each class may have children of varying ages. Special education teachers must teach students the entire curriculum, not just those related to the student's IEP goals.

11. The *** program is designed for students requiring functional language communication, social communication and behavior components skills. Each student's academic needs are addressed in this class.²³ The *** class is an inclusive behavior based classroom where

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15. Student made good progress in and mastered out of goals and out of objectives. Student's most growth was in Student's behavior, . Student and followed directions the first time asked or prompted. Student did well in Student's and and Student's

21. Student's parents received Student's ⁴⁰from Student's*** Teacher to keep them informed about what Student did that day. Every*** weeks, when Student's report card was sent home, the***

*** at all.⁶³ Student had mastered a good deal of the work that Student provided in class.⁶⁴

30. At the end of ***, Student's behaviors were at a low frequency and low intensity. The BIP focused primarily on Student's efforts to *.⁶⁵ The FBA/BIP adapted by the ARDC noted that Student was ~~hand~~ working and followed instructions when first given the majority of the time. Student also ***, participated in class activities without protest and with minimal prompting. However, Student engaged in.^{66*}
31. On May ***, 2016, the ARDC met for a Review of Existing Evaluation Data (REED)⁶⁷ and to modify the ARDC report based on the new FBA.⁶⁸ At that Rkingmi

proximity prompts begin with the support staff near student, and as the student becomes more confident, the support staff moves further and further away from the student.

October 2016 FIE and ARD meeting

- 39. Student's FIE was completed in October 2016 (the 2016 FIE). According to the 2016 FIE, Student is a 14-year-old male with a diagnosis of Autism Spectrum Disorder (ASD). Student's strengths include being a good listener, having a good sense of humor, and being a good friend. Student's needs include having a structured environment, having a consistent routine, and having a supportive teacher. Student's goals for the 2016-2017 school year include increasing his social skills, increasing his academic skills, and increasing his self-management skills.

44. The performance of a student with autism and on the ABAS with respect to these type of questions does not necessarily indicate the student has an ID because there is overlap between autism and intellectual disability. Autism can affect the way a student takes in information or gives information because these two disabilities, autism and ID, overlap. The District could service Student with autism alone.⁹³
45. The *** evaluation included the **. The results of the ** suggest that Student's ** are significantly delayed or deficient. Student's *** fell below the expected range. Similarly, Student's *** showed deficits.⁹⁴ With deficits in Student's ** , it was not expected that Student would be able to ** used in the general education setting without support.⁹⁵ The District's *** did an informal AT evaluation of Student's needs during the 2016 FIE.⁹⁶
46. The 2016 FIE show that Student's AT needs had been assessed throughout the evaluation and it was determined that Student's *** needs were being met even though a formal AT evaluation had not been performed.⁹⁷
47. On October **, 2016, the ARDC met to consider the October **, 2016.⁹⁸ Based on Student's behavior, the October 2016 FIE, information from school personnel and from Student's parents, the ARDC determined that Student met eligibility for special education support and services in the areas of autism, ID, and **. Student would receive Student's core academic instruction in the special education setting, but would remain in the general education classroom with in-class support for **.⁹⁹ Student would also be with Student's general education peers for all nonacademic and extracurricular activities and **.

48. The ARDC also added two new behavior goals targeting appropriate classroom behavior. The goals required the Special Education teachers and staff to use positive behavior strategies that included .¹⁰¹
49. The ARDC acknowledged that removing Student from the general education classroom might cause Student to experience the following harmful effects: (1) lack of opportunity for

Spring 2017

52. The BIP coupled with the strategies and intervention added in October 2016 greatly reduced Student's problem behaviors. These additional interventions included^{110*} By January and February of 2017, the severity and frequency of Student's behavior had improved and

performance improved when Student received ***. Originally, Student only correctly answered *** items, but with *** and *** Student correctly answered *** items.¹¹⁹

56. Although Student displays suba.n0(t)-2(008 Tw 8.04 0 0 8.04 486.72 684.84 Tm2ecei)-6(v)l0.01

Student could *** .¹²⁸ Student was able to participate in simple class and *** activities with *** and ***. Student continued to need support with *** and to use *** appropriately.¹²⁹

61. The ARDC again decided that Student be placed in a *** class. In this class, Student would spend *** minutes per day in a special education class; *** minutes per day in the general education class for ***; and have *** and *** in the general education setting.¹³⁰
62. Student does better with fewer distractions with the instructions directed towards Student.¹³¹ Student is now *** and to *** , but Student needs assistance in completing Student's other academic work.¹³² Towards the end of the year, Student's teacher *** classroom so Student could shift Student's attention to the *** teacher.¹³³
63. In *** , Student's teachers worked in an uncoordinated and collaborated manner to ensure Student met 7.24 rk.

66. The District has modified Student's May 2017 BIP to include most of the recommendations made by Petitioner's Behavior Analyst.¹⁴⁰
67. Student requires ***instruction to progress academically, but with in-class and resource support was able to master most of Student's IEP goals and received good grades. Student's modified curriculum¹⁴¹ Student progressed behaviorally by modeling Student's peers in the general education class setting.¹⁴² It is important for Student to build relationships with peers and Student was establishing some relationships^{***}.¹⁴³

IV. APPLICABLE LAW, ANALYSES, AND CONCLUSIONS

A. The IDEA and Its Implementing Regulations

Under the IDEA, and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet State standards (including IDEA requirements); (c) include an appropriate preschool, ***, or secondary school education; and (d) are provided in accordance with a properly developed IEP.¹⁴⁴ States receiving federal assistance under the IDEA must: (1)

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Student's parent participated. After reviewing the 2015 FIE, Student's performance since being in
***, and considering Student's needs and information from Student's teacher, District personnel, and
the parents, the ARDC recommended that Student be placed in the SLT*** class based on Student's
*** and academics. Student was being taught in the

b. LRE

In determining whether Student's placement comports with LRE requirements, two issues must be addressed:

- (1) Can education in the general education classroom, with the use of supplemental aid and services, be achieved satisfactorily for Student?
- (2)

provided IEP progress reports with Student's report card and helped Student advance Student's IEP goals. Petitioner's parents did not ask for additional information regarding Student's academic performance. Petitioner also asserted that the teacher exaggerated Student's level. However, the evidence shows that the *** program Student was using in class did not correspond directly to the District's *** level and even Student's mother agreed Student had improved.⁶³

The information provided at the March ***, 2017 ARDC meeting by Student's *** teacher indicated that Student was ***, but Student's *** with *** were at an instruction ***. However, she noted that while Student could ***, Student's *** was not at that level. Student mastered *** out of *** objectives set out in Student's 2015 IEP. Student's behavior improved during *** by implementing the BIP developed during the spring semester. Consequently, Student enjoyed positive academic and non-academic benefits during ***. Therefore, the District provided FAPE to Student during the 2015-2016 school year.

2. ***: 2016-2017 School Year

a. The 2016 IEP Was Individualized

The 2016 IEP was individualized on the basis of Student's assessments and performance during ***. The March ***, 2016 ARDC created Student's IEP for the 2016-2017 school year after consideration of Student's assessments and performance in ***, the 2014 FIE, information from Student's teachers and school personnel, and parents' concerns and information. Student improved and Student mastered many of Student's IEP goals. Student's parents and their advocate provided significant input during this meeting and the ARDC reached consensus on all issues including keeping Student in the *** program, but increasing the time in the *** general education setting with in-class and resource support.

On May ***, 2016, the District's Behavior Analyst finalized the FBA which was considered by the ARDC on May ***, 2016. The ARDC also reviewed Student's current performance. At that

¹⁶³ Tr. at 93.

time, Student had a **and a **. Student could **; but Student's**

b. LRE

Petitioner does not dispute that Student's placement in *** was in the LRE. Instead, Petitioner

recommended that Student be returned to the class even though most of the District personnel on the ARDC had never observed the class. It is this recommendation to the March 2016 IEP that is at the heart of this dispute.

1. The 2017 IEP Is Individualized

Petitioner disagrees with the ARDC determination that Student is eligible for special education services with the added that Student needs to be in the program. Disagreeing with the outcome of an ARDC meeting and the resulting IEP does not indicate the IEP or indicate a denial of FAPE. As discussed above, there was insufficient evidence to establish that the ED's and ARDC's determination that Student has an ID was in error. Moreover, it is unclear if any, the addition of an ID had in the ARDC's determination to return Student to the program.

The ARDC considered the parents' concerns and the recommendations made by the Independent LSSP and Behavior Analyst. Several of the Behavior Analyst's recommendations were adopted by the ARDC. The evidence is insufficient to establish that the 2017 IEP is not individualized and based on Student's assessments and performance.

2. LRE

The District maintains that the program will still afford Student time with Student's non-disabled peers during the day. It will not afford Student any time in a general education setting for core classes. Student's grade teacher testified that Student did not receive any academic or non-academic benefit from participating in the general education class. All of Student's core curriculum was modified to a or level. Although none of these teachers had observed the program in October 2016, and most not until before the hearing, each recommended that Student needs the program because it would afford Student access to the entire curriculum at Student's level, at Student's space, and with the Student requires.

Student's behavior has dramatically improved and exposing Student would not result in a non-academic benefit. Removing Student from all core academic classes deprives Student of modeling Student's peers and will likely cause Student to regress. Although Student does not**.

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maintain Student's placement in the general education classroom with class and Resource Room supports.

V. CONCLUSIONS OF LAW

1. The District is a local education agency responsible for complying with the IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq*
2. Parents of students with disabilities are entitled to file a due process complaint and have a hearing on any matter relating to the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. 20 U.S.C. § 1415(f); 34 C.F.R. §§ 300.507-.513.
3. Petitioner bears the burden of proof on issues raised in its due process hearing request *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
4. A party attacking the appropriateness of an IEP established by a school district bears the burden of showing why the IEP and resulting placement were inappropriate under the IDEA. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R* 200 F.3d 341, 347 (5th Cir. 2000); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011 (5th Cir. 2010).
5. The one year statute of limitations applies to this proceeding, resulting in an accrual date of March 31, 2016. 19 Tex. Admin. Code § 89.1151(c).
6. Student's 2015 and 2016 IEPs developed by the District were appropriate for Student based on Student's assessment and performance. 34 C.F.R. §§ 300.324, .502(c)(1); *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 1001 (2017); *Cypress-Fairbanks*, 118 F.3d at 253 (5th Cir. 1997).
7. The District's 2016 FIE of Student including the ID evaluation was conducted in accordance with IDEA requirements and is appropriate. 34 C.F.R. §§ 300.8(c)(10), .301, .303 - .311; 19 Tex. Admin. Code § 89.1040(b)(5).
8. The District provided Student with a FAPE during the 2015-2016 and 2016-2017 school years. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; *Andrew F.*, 137 S. Ct. at 1001; *Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181 (1982); *Bobby R* 200 F.3d at 347-348.

9. The District's proposed placement to return Student to the SLL^{***} does not meet the LRE requirements of the IDEA. 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114, .116; *Daniel R. R. v. State Board of Education*, 874 F.2d 1036, 1039, 1040-47 (5th Cir. 1989).

ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's requested relief is granted in part, such that the District must maintain Student's placement in the general education classroom with Class and Resource Room support. All other requested relief is denied.

SIGNED July 7, 2017.

NOTICE TO THE PARTIES

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision 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.¹⁶⁵