

DOCKET NO. 250-SE-0617

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

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Petitioner, STUDENT b/n/f/ PARENT (“Petitioner” or “Student”) brings this action against the Argyle Independent School District (“Respondent” or “District”) under the Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1401 *et seq.* (IDEA) and its implementing state and federal regulations.

After review of the Parties’ evidence and the closing arguments, the Hearing Officer determined that Petitioner did not meet Petitioner’s OTJ -0.002 et31U(doy u60.72 0.000

C. Continuances

After finding good cause, the District was granted a continuance and extension of the decision due date on July 14, 2017. Two other motions for continuances, one from each Party, were denied for failing to state good cause.

D. Preliminary Motions

The Hearing Officer disposed of several preliminary motions prior to hearing as follows: granted District’s partial motion to dismiss non-IDEA claims; granted District continuance; granted ***; severed ***; overruled District’s disclosure objection; and denied Petitioner’s motion for continuance.

II. DUE PROCESS HEARING

The due process hearing was conducted on September 14, 2017. Petitioner continued to be self-represented by Student’s Mother. In addition, without objection, ***, ***, sat at counsel table with Petitioner to offer emotional support. Respondent continued to be represented by its legal counsel Ms. Buechler. In addition, ***, Director of Special Education for the District attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter.

***, Ph.D., Argyle ISD Superintendent observed the entire closed hearing without objection from either Party.

*** Student lives within the geographical boundaries of the District with Student’s Mother ***. ***.¹ ***.² ***. ***.³ ***.⁴

¹ ***. ***. R. Ex. 18 at 3, 13 (Prior Orders).

² Order No. 5. at 1-2.

³ Order No. 9.

⁴ Order No. 9 at 2.

Student work separately in the general education and resource classrooms on activities beneficial to Student while the rest of the class works on grade level activities or activities that will not benefit Student; and

- b. An order directing the District to provide special instruction or services in a resource or mastery classroom.
2. Require the District to assign a highly qualified, ***, certified special education teacher to all of Student's academic classes.

B. Respondent's Requested Relief

Respondent requests a denial of all of Petitioner's claims and requested relief.

V. FINDINGS OF FACT

1. Student is a ***-year-old child eligible for special education services from the District as a student with *** (***) (***), ***, and ***.⁵
2. Student enrolled in the District in ***. ***.⁶
3. Prior to enrolling in the District, Student had never received an educational assessment (*i.e.*, a Full Individual Evaluation as defined by 34 C.F.R. §§ 300.15, .304-311).⁷
4. Prior to enrolling in the District, Student received privately obtained Applied Behavior Analysis (ABA) therapy services from *** and ***. ABA therapy is primarily designed to treat autism.⁸
5. Student is currently in the *** grade and attended the District at *** during the 2016-2017 school year for *** grade.⁹
6. Student's most recent IEP provides the following related services: *** minutes per school year for consultation with *** specialist, consultation with a *** therapist for *** minutes every grading period, and *** hours per week of in class

support for *** and ***.¹⁰

7. Student's most recent IEP contains detailed descriptions of Student's present levels of academic achievement and functional performance (PLAAFPs) for each subject. The PLAAFPs identify Student's strengths, weaknesses, and needs. Furthermore, the IEP contains measurable goals for each subject with short term objectives. Needed related services are identified and the duration and frequency of the services and the location where the services will be provided is established.¹¹
8. Student's special education teacher provided Mother her personal cell number and email address to facilitate communication prior to the 2016-2017 school year, and Mother frequently utilized those communication channels.¹²
9. When Student enrolled in ***, Student's *** skills were "very, very basic." Student could ***. Student could not *** and would only *** when prompted, and Student was unable to work independently. Student knew ***.¹³
10. Student's most recent (***) FIE was completed on December ***, 2016,¹⁴ and contained a *** Diagnostic Assessment (***) that was administered on November ***, 2016—approximately *** after Student enrolled. The *** is a "comprehensive, individually administered measure of essential *** and skills." The *** measures three general areas: ***.¹⁵
11. Student achieved a *** scaled score of ***. That score placed Student's *** abilities at the *** level and an age equivalency of ***. Student's scale score of *** placed Student's *** ability in the bottom *** percentile as compared to other students Student's age.¹⁶
12. Student's *** IEP goals and services for *** were developed from Student's Present Levels of Academic Achievement and Functioning (PLAAFPs) noting the need for direct, specialized, and intensive *** instruction. Student's *** goals contained measurable goals and short term benchmarks to measure progress.¹⁷

¹⁰ R. Ex. 1 at 41.

¹¹ R. Ex. 1.

¹² Tr. at 356.

¹³ Tr. at 313, 345.

¹⁴ R. Ex. 7 at 1.

¹⁵ R. Ex. 7 at 25.

¹⁶ R. Ex. 7 at 26.

¹⁷ R. Ex. 1 at 2, 17-20.

13. Over Mother's objection, Student was placed in the *** classroom for ***. Mother requested that Student be placed into a Resource Class for ***. Placement in the *** classroom is necessary for Student to make progress in *** because *** (***) and adaptive behavior skills (***) are embedded into the curriculum of all *** classes. In the Resource Class, the majority of students are5g()-10(o)2(f)5(s

20. Student's *** placed Student in the *** percentile as compared to other students Student's age and at a *** grade *** level.²⁶
21. The District used a variety of *** curriculum with Student and implemented *** IEP goals vertically aligned to Student's level.²⁷
22. Student was initially placed in the *** classroom for ***. At Mother's insistence, the District reluctantly agreed to place Student in the Resource Classroom for ***.²⁸ Like ***, the District believes placement in the *** classroom is necessary for Student to make progress in *** because essential *** and adaptive behavior skills are embedded into the curriculum of all *** classes.
23. Student achieved a *** *** score meeting state standards for *** in both *** and *** grades as measured by the ***. A satisfactory *** score is 300. Student scored *** in *** in both *** and *** grade STAAR assessments.²⁹
24. Like ***, maintaining *** proficiency over *** school years in *** was academic progress because the *** grade *** *** is more rigorous.³⁰
25. During the 2016-2017 school year, the District addressed LRE thr***

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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 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, the 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 its jurisdiction and thus the school district had the duty to serve Student under IDEA.

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 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).

B. IEP

In meeting the obligation to provide a FAPE, the 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. Instead, a child's IEP also includes 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, and 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).

C. The Four Factor Test:

In Texas, the Fifth Circuit has articulated a four-factor test to determine whether a school district's program meets IDEA 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).

Second, the District's program was delivered in the least restrictive environment. Based on Student's assessments and unique abilities, Student's educational program was designed be delivered in a mix of general and special educational settings. The District considered the LRE and placed Student in the general education environment to the maximum degree feasible that allows Student to continue to make academic and non-academic progress.

Third, the services were provided in a coordinated, collaborative manner. Student's special education teacher provided Mother her personal cell number and email address to facilitate communication prior to the 2016-2017 school year, and Mother frequently utilized those communication channels. The ARDC school personnel li9()-10(w)4(a)6(s)1()]T

D. Issue No. 1: Did the District fail to address Student’s need for services in *? ***?**

The District did properly address Student’s needs for ***, including Student’s need for related services. At hearing, Petitioner did not address a lack of services for ***. “Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.” 20 U.S.C. § 1401(33). Under the IDEA, “the term ‘related services’ means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, soc(y) 6 -6 -1.7 es,tg-2(>n4((y)((o)I)((o)I)(6(c)4()-1o(hol)- nur22)3(s)-(ve)4(t
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was academic progress because the

Again, in this case, whether services were needed can ultimately be determined by looking at progress. Student achieved a *** score meeting state standards for *** in both *** and *** grades as measured by the ***. A satisfactory *** score is 300. Student scored *** in *** in both *** and *** grade STAAR assessments.⁶² Like ***, maintaining *** proficiency over *** school years in *** was academic progress because the *** grade *** is more rigorous.⁶³

Student did not meet Student's burden of proof to show the District failed to address Student's need for services in ***.

F. Issue No. 3: Did the District fail to address Student's need for general education in the LRE?

The main issue in this case is whether Student's educational placement was in the LRE.⁶⁴ Mother argued Student's placement in the *** classroom deprived Student of positive non-disabled peer modeling for academic ***

provide a FAPE on the one hand, and the requirement that, on the other hand, it does so within the least restrictive environment.⁶⁶

“Even when school officials can mainstream [a] child,” however, “they need not provide for an exclusively mainstreamed environment.”⁶⁷ Rather, “the IDEA requires school officials to mainstream each child only to the maximum extent appropriate. In short, the IDEA’s mandate for FAPE qualifies and limits its mandate for education in the regular classroom.”⁶⁸

In *Daniel R.R.*, the Fifth Circuit established a flexible, two-part test for determining whether an IEP’s placement was in the LRE. “First, can education in the

for a BIP.⁷² Student was not a behavior or a discipline problem. Student was cheerful, pleasant, and sought to please Student's teachers.⁷³

Because of Student's ***, Student had initial challenges adjusting to the necessary structure of public school (*e.g.*, ***).⁷⁴

Student's behavior improved/progressed from *** grade during the 2016-2017 school year at the *** school to this year in *** grade.⁷⁵ Student's behaviors are not disruptive to Student's educational program or the program of other students; they are indicative of Student's developmental level.⁷⁶

The FBA identified two problematic behaviors: ***. The FBA identified and implemented positive behavior reinforcements.⁷⁷

Petitioner did not present sufficient evidence to show the District failed to provide needed behavioral supports.

H. FAPE -- Was the School Distric---

The ARDC/IEP carefully balanced Student's need for essential communication and adaptive behavior skills through the delivery of a scaffold alternate curriculum delivered in a variety of special and general education settings. Student's most recent IEP contains detailed descriptions of PLAAFPs for each subject. The PLAAFPs identify Student's strengths, weaknesses, and needs. Furthermore, the IEP contains measurable goals for each subject with short term objectives. Needed related services are identified and the duration and frequency of the services and the location where the services will be provided is established.⁷⁹ Review of the evidence establishes the Student's educational program was adequately devised and implemented. 34 C.F.R. § 300.22. Student received a FAPE at all relevant times.

VII. CONCLUSIONS OF LAW

1. The District is an LEA responsible for complying with the IDEA as a condition of the State of Texas' receipt of federal funding, and the District is required to provide each disabled child with a FAPE pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Student, by next friend, Mother, (collectively, Petitioner) bears the burden of proof on all issues raised in Petitioner's complaint. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The Texas one-year statute of limitation began running one year before the date the Complaint was originally filed on June 12, 2017. The accrual date for the complaint was June 12, 2016. 19 Tex. Admin. Code § 89.1151(c).
4. The District's placement and schedule of services for the 2016-2017 school year placed Student in the LRE. 20 U.S.C. § 1412(a)(5)(A). *See Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1039 (5th Cir. 1989).
5. Student's IEP as written was appropriately individualized to ensure Student makes meaningful educational progress. 20 U.S.C. § 1414(c)(1)(B)(iii)-(iv); 34 C.F.R. § 300.324(a)(2)(v), (a)(3)(ii).
6. Student's assessments properly identified Student's individualized needs for specialized and/or related services. 20 U.S.C. § 1401(26)(A), (33); 34 C.F.R. § 300.8(a).

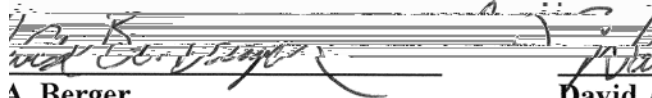
⁷⁹ R. Ex. 1.

- 7. Student’s IEP provided appropriate and necessary services for ***, ***, and behavior. 20 U.S.C. § 1401(26)(A), (33); 34 C.F.R. § 300.8(a); *School Committee of Town of Burlington, Mass. v. Department of Ed.*, 471 U.S. 359, 369, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985).

VIII. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner’s requests for relief are **DENIED**.

SIGNED October 12, 2017.



A. Berger David [unclear]
 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 § 89.1185(n).