



Student was represented throughout this litigation by Student's non-attorney representative, Karen Mayer Cunningham. The District was represented throughout this litigation by its legal counsel, Amy Tucker with Rogers, Morris & Grover, LLP.

III.

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Pursuant to FERPA – 20U.S.C§ 1232g;
34CFR Part 99

V. FINDINGS OF FACT

1. Student is *** years old and in the *** grade. Student lives with Student's parents and ***. Student was ***.¹
2. Student began receiving speech therapy from the District in October 2009, when Student was *** years old. Student also attended the District's *** program for children with disabilities during the 2009-2010 and 2010-2011 school years. Student has attended school in the District since then.²
3. Student has typically received instruction in both special education and general education settings, depending on the subject area. A special education setting provides more hands on activities, small group instruction, and one-on-one instruction at a slower pace and in a smaller setting.³
4. Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) in 2014.⁴
5. According to Student's most recent individual evaluation (FIE), dated September **, 2019, Student meets eligibility criteria for special education as a student with *** speech impairment, and other health impairment due to ADHD.⁵
6. Based on testing in 2016, Student's full-scale IQ is ***. The 2019 FIE included the Test of Non-verbal Intelligence-Fourth Edition (TON4) and Student received an index score of ***, indicating cognitive abilities that are below normal limits when compared to same age peers.⁶
7. Student's language abilities are below the average range. Student is a limited verbal communicator and has had access to *** since *** school. Student's *** is an application called *** on an iPad.⁷

¹ Joint Exhibit (JE) 1; JE 7 at 11, 14

² JE 7 at 18.

³ JE 2; JE 6; JE 7; transcript (Tr.) 265, 362, 372, 374.

⁴ JE 7 at 19.

⁵ JE 7 at 24.

⁶ JE 7 at 3, 15.

⁷ JE 7 at 9-10; Tr. 354, 384, 385.

8. The 2019 FIE recommended modified instructional materials ~~access~~ to the Texas essential knowledge and skills (TEKS) through the use of essence statements ~~and~~ as well as prerequisite skill instruction ~~and~~.
 9. The 2019 FIE notes that when Student attended ~~and~~ *** in the general education setting, Student is able to successfully receive grade level instruction with significant modifications to assignments and assistance from the Special Education staff” and Student “is performing significantly below Student ~~grade~~-level peers in all academic areas.”
 10. During *** grade, in the 2019/2020 school year, Student received instruction in ~~and~~ math in the *** (***) , a special education setting. Student received instruction in the general education classroom with inclusion support for ~~***, ***, ***, and **~~.
 11. During *** grade, the case manager recommended that Student receive more instruction in the special education setting. The speech therapist agreed that Student would benefit from more time in the special education setting ~~in~~ grade and it was discussed by Student’s admission, review, and dismissal committee (ARSD). Student’s parent did not agree with this proposal.¹
 12. The Student’s case manager also
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see how the speech therapist used the *** with Student and would then use it more at home.²⁷

28. Student's teachers characterized Student's experience in *** and *** .15 Td [0 Tc (8x O)-9.1 (F)-7.5

34. Student's English ~~***~~PLAAP reflected that Student performed overall at a ~~level~~ independently. Student was able to read ~~***~~ grade level books aloud and answer comprehension questions with support.³⁴
 35. Student's math PLAA~~P~~ reflected that Student performed overall at a ~~level~~. Student was able to ~~***~~ but struggle~~d~~ with ~~***~~. When prompted, Student was able to ~~***~~. Student could ~~***~~ and use a ~~***~~.³⁵
 36. Student's ~~***~~ PLAAFP reflected that Student received alternate assignments that address the essence statements of the TEKS being addressed in the general education curriculum. Student was successful on ~~***~~ assignments at the ~~***~~ grade reading level when provided Student's accommodations.³⁶
 37. Student's ~~***~~ PLAAFP reflected that Student received ~~an~~ alternative assignments that addressed prerequisite skills and essence statements of the TEKS being addressed in the general education curriculum. Student was successful on modified assignments that were ~~***~~ assignments provided with Student's accommodations.³⁷
 38. The District recommended that Student's schedule of services change ~~from~~ grade such that Student would begin to receive ~~and~~ ~~***~~ instruction in the ~~***~~ instead of the general education classroom. The proposed schedule of services recommended continued
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41. In considering the least restrictive environment, the IEP stated that Student “requires additional time and support to master educational objectives. Continued remediation for academic subjects in the ***setting, as well as Speech Therapy[**], and OT is needed for Student to be successful.” The IEP stated that Student “cannot achieve the goals and objectives contained in the IEP even though supplugh s26S/178 (s)-5 (t)-6 (at)-3 T1pyds and



A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁵¹ *Schafer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd*, 1999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Tatro v. State of Tex.*, 703 F.2d 823, 830 (5th Cir. 1983), *aff'd in part, rev'd in part sub nom. Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984), and *vacated in part*, 741 F.2d 82 (5th Cir. 1984).

B. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d)

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proposal would not have impacted Student's cognitive ability to understand the material, which is congruent with Student's present levels and cognitive. Further, demanding that general education teachers provide instruction to the whole class using for Student's benefit is unduly burdensome on the District. See Brillon v. Klein Indep. Sch. Dist. 100 F.App'x 309, 314 (5th Cir. 2004). Petitioner's arguments also ignore that Student had a communication partner using Student's *** with Student at all times when in the general education setting. This is significant and evidences the District's extensive efforts to accommodate Student in the general education environment.

"The Act does not permit states to make mere token gestures to accommodate a disabled student, it instead provides a broad, but not limitless, requirement to modify and supplement the regular or general education setting for the student. W., by & through Jennie W. v. Comal Indep. Sch. Dist., 2021 WL 3887696, at *14 (W.D. Tex. Aug. 31, 2021) (quoting Daniel R.R., 874 F.2d at 1048). Here, the District's efforts to accommodate Student in general education *** and *** were legally sufficient.

b. Educational benefit in general education

In support of the position that Student's placement should not change, Petitioner relies heavily on Student's progress on IEP goals. Student indeed mastered Student's IEP goals during the 2020-2021 school year. However, that determination of placement is not based solely on progress on IEP goals. See Klein Indep. Sch. Dist. v. Hovee, 100 F.3d 390, 397 (5th Cir. 2002). Additionally, Student's IEP goals represent a very small fraction of the material covered in the general education curriculum, and only at the KSE essence statement level. See Brillon, 100 F.App'x at 314. Progress on IEP goals alone does not necessarily demonstrate appropriate progress. Notably, guidance from the Office of Special Education Programs states that "[t]here is no requirement that a student fail in a less restrictive environment before moving to a more restrictive environment." Office of Special Ed. Prog., Letter to Richard, 21 IDELR 433 (1987). Student's

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Daniel R.R, the hearing officer determines that the District's proposed placement is Student's least
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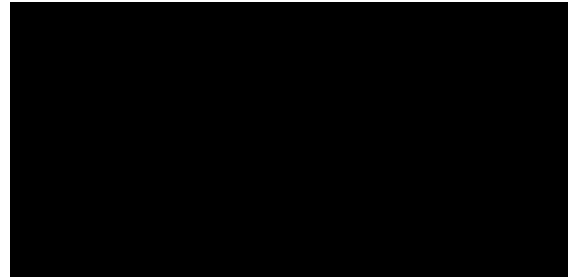
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VIII. ORDERS

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

SIGNED November 1, 2021.



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.