
Petitioner requested the following items of relief:

1. Order the District to educate Student in the general education classroom with appropriate supports and services.
2. Order the District to provide Student compensatory education services.
3. Order the District to provide funding for a private reading specialist to work with Student.
4. Order the District to provide any other relief the Hearing

During the course of the hearing, a total of five witnesses testified. The first witness was Student's teacher from the 2022-23 and 2023-24 school years. The next witness was Student's inclusion teacher during the 2022-23 school year when Student was in *** grade. The third witness was Student's principal at *** from 2018-23. The fourth witness was the District's party representative who has been working with Student for more than a year. The fifth witness was the District's low-incidence disability specialist who supports the *** classroom, a self-contained classroom focused on students with disabilities who need to acquire prerequisite skills to better access the curriculum. Each witness testified that Student needs to be placed in the *** classroom for Student's academic subjects. No one testified that Student should remain in Student's current setting. No reports or evaluations offered into evidence indicated Student's current setting was appropriate for Student or that Student's education program was not appropriate for Student's needs.

The first witness testified that she cannot implement the curriculum in a general education or resource setting. Student requires not just accommodations or modifications, but a curriculum that completely differs from the curriculum given to other students. The second witness also testified that Student needs to be placed in the *** setting. She testified that Student is no longer making progress with Student's same-age peers and that the gap will continue to widen as the material becomes more challenging unless Student obtains some prerequisite skills. Student needs the more focused setting of the *** classroom where Student's own curriculum can be implemented.¹

¹ Transcript (TR) 231.

The third witness testified that Student needs to acquire a number of prerequisite skills before Student can meaningfully benefit from a mainstream or resource setting. Those prerequisite skills are best taught in the *** classroom. The fourth witness indicated that, while she has seen many cases in her years of experience that present a “gray area” where a Student’s needs are not necessarily clear, Student’s situation did not fall into a “gray area” where there was a doubt whether the *** setting was the best and most appropriate setting for Student. The *** setting will improve Student’s relationship with Student’s peers and Student’s ability to make progress. It is the most appropriate setting for Student. Finally, the fifth witness testified, based on her years of experience working with and supporting the *** classroom, that it would help Student gain Student’s prerequisite skills.²

Taken altogether, the witnesses made clear that the curriculum for Student should not be implemented in a general education or resource setting. Student requires not just accommodations or modifications, but a curriculum that completely differs from the curriculum given to other students. Student needs to be placed in the *** setting for delivery of appropriate instruction. Student no longer is making progress with Student’s same-age peers in the general education setting. If Student remains in the current placement, the gap for Student will continue to widen as the material becomes more challenging. Student needs the more focused setting of the *** classroom where Student’s own curriculum can be implemented.³

² TR 319, 386.

³ TR 231. nF8 Tw 4.683 0ed [//e /PaginT[mT4b.1 (ac)0.6 .6er1TJ-0.012 Tc 0.8.5 (m)0.8 (a8.52 72 93.9 TmD 5 BD-1 (e))TJ-0.009 Tc

December 2017. The District found Student eligible for special education and related services under the eligibility categories of autism, speech impairment, and ***.⁶

3. While Student was in the *** program at *** in March 2019, a private evaluator conducted a comprehensive psychological evaluation at the request of Petitioner. The evaluator found Student qualified for special education as a student with a speech impairment given Student's deficit in verbal communication and delayed speech in social interactions. The evaluator also found Student qualified for special education as a student with ***, given Student's significantly below-average ***, as measured by the Stanford Binet Intelligence Scales, Fifth Edition. Student's Nonverbal IQ score was a ***, which falls in the range of ***. The evaluator noted that Student exhibited deficits in all areas of adaptive behavior: communication, use of community resources, social/interpersonal skills, home living, work, safety, self-care, self-direction, and leisure, as measured by the Vineland Adaptive Behavior Scales, Third Edition. The evaluator made a number of recommendations, including continued speech therapy, a consistent and predictable schedule, high impact visual T170 To 1123 (ap) 012 (conw.) JTJ01

eligibility category of autism, which had been removed following the 2019 private evaluation that recommended removing that label.⁸

5. In November 2021, when Student was a *** grader at ***, the District conducted an occupational therapy evaluation in response to teacher concerns of Student's difficulties staying on task. The evaluator noted that Student's strengths included object recognition, ***. However, Student's greatest barrier was attending to tasks. Because Student struggled to pay attention, Student often missed instruction and was typically behind on classwork, all of which interfered with Student's functional performance in school. The evaluator noted that Student was unmotivated to perform non-preferred tasks. Student exhibited weaknesses in figure ground, sequential order, and visual memory, as measured by the Test of Visual Perceptual Skills. The evaluator recommended Student continue occupational therapy services— one 30-minute session weekly for at least 30 sessions per school year.⁹
6. Additionally, in November 2021, an outside evaluator conducted a comprehensive psychological evaluation. Student exhibited ***. The evaluator made a number of recommendations, including participation in group or individual social skills sessions to assist with self-expression, as well as breaking down assignments into smaller increments to maintain Student's attention and decrease academic frustration, among others.¹⁰
7. In December 2021, the District conducted a REED and reevaluation. The District performed a number of standardized assessments, including the Woodcock-Johnson Tests of Cognitive Abilities, Fourth Edition; the Wechsler Intelligence Scale for Children, Fifth Edition; and the Adaptive Behavior Assessment System, Third Edition. The District conducted interviews with Student's parent and teachers. District evaluators reviewed the 2017 FIE, 2019 psychological evaluation, 2021 occupational therapy

⁸ J5, at 36, 40, 70-72.

⁹ J3, at 16-17, 20.

¹⁰ J4, at 28-30.

evaluation, and 2021 psychological evaluation. The District evaluators also observed Student in-person in class several different times.¹¹

8. Student was found to have an Intelligence Quotient of ***, consistent with Student's most recent REED in January 2020 and indicative of low **. Student exhibited weaknesses in every area of cognitive processing ability, including cognitive processing speed, auditory processing, and long-term retrieval, among several others. Student's performance in the Nonverbal Index

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but the administrator wanted to continue the meeting after a break. In an escalated voice, Student's parent accused the ARD Committee of violating Parent's parental rights. Concern over Parent's health led the ARD Committee to table the meeting. On March ***, 2023, the ARD Committee met to continue reviewing Student's progress and recommended a change of placement into a self-contained ***

22. Student's PLAAFPs at the beginning of the 2022-23 school year demonstrate that Student received numerous accommodations and supports in the classroom. The PLAAFPs reported that in reading, Student could *** with supports. In math, Student required visuals, charts, and manipulatives with support to add meaning to given assignments. Student additionally needed frequent prompts to complete assignments. Student could do ***.²⁶
 23. Student's PLAAFPs as of April of 2023 further show that Student continued receiving accommodations and supports throughout Student's ***-grade year. In math, Student could *** when prompted. In ***, Student could participate in classroom and ***, and specialized support. In ***, Student could identify ***. In general, Student received various behavioral supports to improve Student's time spent on tasks: praise, token-economy, access to preferred materials, chunking assignments, visual schedule, and frequent reminders.²⁷
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- Whether positive academic and non-academic benefits are demonstrated.

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F., 118 F.3d 245, 253 (5th Cir. 1997); *E.R. by E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

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

In meeting the obligation to provide a FAPE, a school district must have in effect an IEP at the beginning of each school ev. chnniin

general education settings with the use of supplemental aids and services; and

- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. State Bd. of Ed., 874 F. 2d 1036, 1048 (5th Cir. 1989).

The evidence indicates that the District's proposed placement in the *** classroom represents Student's LRE. Every witness who testified in this case, each of whom is familiar with Student and two of whom taught Student in the classroom during the 2022-23 school year, strongly recommended placement in the *** classroom so that Student can work on prerequisite skills. Student's situation does not even "fall into a gray area" as to whether Student would (a) **0.002 T (2 T** **0.78**

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Student can.

From the evidence presented in this case, the District is basing Student's educational program on its evaluations and ongoing data and observations of Student. While Student's placement in *** would be more restrictive, it is the best placement for Student to maximize Student's potential. Student needs to recover prerequisite skills, and the *** tt04 t2rs8i.807 Tec 411 (t2ec 411 (t2ec 41pQc6eea

