

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 burden of proof on any of the contested hearing issues and denied the requested relief.

A. Legal Representatives

Student was a self-represented litigant assisted throughout this litigation by Student’s Mother. The District was represented throughout this litigation by its legal counsel, Cynthia S. Buechler, of Buechler and Associates.

B. Resolution Session and Mediation

The Parties conducted an unsuccessful Resolution Session on June 28, 2017. The Parties proceeded to mediation on September 1, 2017, but did not reach a settlement.

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.

III. ISSUES

A. Petitioner's Issues

Petitioner submitted the following overall, broad issue: Whether the school district failed to devise an appropriate Individual Educational Plan (IEP) and therefore failed to provide Student with a free, appropriate public education (FAPE) under the IDEA within the one year statute of limitations period that applies in Texas; and specifically:

- (1) Did the District fail to address Student's need for services in ***;
- (2) Did the District fail to address Student's need for services in ***;
- (3) Did the District fail to address student's need for general education in the Least Restrictive Environment (LRE); and
- (4) Did the District fail to provide Student with appropriate positive behavioral supports and services as required by the IDEA?

B. Respondent's Position

The District timely filed its response in the form of a general denial on June 21, 2017.

IV. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following items of requested relief:

1. An order requiring the District to modify Student's general education curriculum to accommodate Student's different levels of ability by:
 - a. An order requiring the District to provide "Parallel Instruction" by having

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

⁵ R. Ex. 1 at 2.

⁶ Tr. at 131.

⁷ Tr. at 132-33.

⁸ Tr. at 132.

⁹ R. Ex. 8 at 4; Tr. at 111-12.

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 are working at grade level on assignments aligned with the Texas Essential Knowledge and Skills (TEKS).¹⁸
14. The District's methodology for teaching *** to Student used electronic software comprising: ***. All of these programs are aligned with the TEKS, are peer reviewed, and *** are considered the "gold standard" for teaching *** to students with ***.¹⁹
15. Student passed the *** for *** in both *** and *** grades by scoring *** both years. Maintaining *** proficiency over *** school years was academic progress because the *** grade *** *** is more rigorous.²⁰
16. Student demonstrated academic progress in *** between *** and *** grade as shown by Student's work on ***.²¹
17. Using the *** instrument, Student's February ***, 2016, FIE assessed *** in four areas: ***. Student scored an overall *** score of ***, placing Student in the *** percentile for *** compared to other students Student's age. A *** score of *** indicates Student is "seriously below grade level requiring intensive intervention."²²
18. The District administered a second FIE in December 2016 and used the *** and *** instruments to measure Student's ***. The *** assessed Student's *** to be "Extremely Below Average" in *** (***).²³ The *** measured Student's *** as "Below Average" for ***, and with an overall "very poor" standard score of ***.²⁴
19. In class, Student was able to *** but continued to demonstrate weakness with *** *** impeding Student's ability in a general education setting without special education supports and accommodations.²⁵

¹⁸ Tr. at 264-65.

¹⁹ Tr. at 229-30.

²⁰ Tr. at 252-53.

²¹ Tr. at 254.

²² R. Ex. 7 at 22-23; R. Exs. 24-25 (work samples).

²³ R. Ex. 8 at 16-17.

²⁴ R. Ex. 8 at 17.

²⁵ R. Ex. 1 at 2.

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 through mixed placements in general and special education classes:³¹

Course & Location	Gen. Ed. Time	Spec. Ed. Time	Graded By
*** (Gen. Ed. Classroom)	***		General Ed. Teacher
*** (Spec. Ed. Classroom)		***	Special Ed. Teacher
*** (Spec. Ed. Classroom)		***.	Special Ed. Teacher
***Gen. Ed. Classroom)	***		General Ed. Teacher
*** (Spec. Ed. Classroom)		***	Special Ed. Teacher
*** (Special Ed.		***.	Special Ed. Teacher

²⁶ R. Ex. 1 at 2.

²⁷ Tr. at 226-27, 350.

²⁸ Tr. at 306-07.

²⁹ R. Ex. 12.

³⁰ Tr. at 252-53.

³¹ R. Ex. 3 at 27.

Classroom)			
*** Special Ed. Classroom		***	Special Ed. Teacher
*** Gen. Ed. Classroom	***		General Ed. Teacher

- 26. As reflected in the chart above, Student typically spends *** minutes per school week mainstreamed in general education classes and *** minutes per week in special education settings.³²
- 27. Based on Student’s unique circumstances, the District determined these mixed placements were in Student’s best educational interest. The mixed settings were designed to be educationally relevant and challenging while providing Student an alternate curriculum.³³
- 28. Student’s special education *** class consisted of the special education teacher ***. Based on Student’s individualized needs the special education support was necessary for Student to participate in the general education class.³⁴
- 29. Student’s *** placement in general education with special education *** was done at Mother’s request.³⁵
- 30. Mother’s placement concerns were addressed again by the ARDC on December ***, 2016. Mother requested Student receive more instruction in general education settings. The District noted that during the previous year, while attending ***, Student required *** to attend general education classes. The District determined the mixed general and special education settings permit Student to participate in classes more independently, while providing the specialized instruction necessary for Student to progress academically and non-academically.³⁶
- 31. In an effort to allay Mother’s LRE/placement concerns, the District agreed to try providing special education *** instruction in a resource classroom versus in a self-contained setting.³⁷
- 32. Mother would like Student placed into general education settings 100% of the

³² R. Ex. at 27.

³³ Tr. at 260-62.

³⁴ Tr. at 262.

³⁵ Tr. at 261.

³⁶ R. Ex. 3 at 30-32.

³⁷ R. Ex. 3 at 31-32.

- time with necessary supports and accommodations.³⁸ Mother believes special education stigmatizes Student and requested that Student not be permitted to sit with disabled peers at lunch to force socialization with non-disabled peers.³⁹
33. Student's current placement consists of classes in special education settings (** classroom, Resource classroom for **) and general education settings for Student's **, and **. ⁴⁰
34. Student's December **, 2016, FIE contained a Functional Behavioral Assessment (FBA) that involved over ** separate classroom observations. The Assessment Committee, including Mother, agreed there was no need for a Behavior Intervention Plan (BIP).⁴¹
35. Student was not a behavior or a discipline problem. Student was cheerful, pleasant, and sought to please Student's teachers.⁴² Student was liked and accepted by the entire school.⁴³
36. **. Because of Student's **, Student had relatively minor challenges initially adjusting to the necessary structure of public school (*e.g.*, **).⁴⁴
37. Student's behavior improved/progressed from ** grade during the 2016-2017 school year at the ** school to this year in ** grade.⁴⁵ 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.⁴⁶
38. The FBA identified two problematic behaviors: **.
39. The ** classroom focus is not limited to academics. The ** classroom includes teaching of academic, social, functional, and behavioral skills in every class.⁴⁷
40. The FBA identified and implemented positive behavior reinforcements.⁴⁸

³⁸ Tr. at 115, 136

³⁹ Tr. at 172-73.

⁴⁰ R. Ex. 3 at 27; Tr. at 261.

⁴¹ R. Ex. 7 at 9-16, Tr. at 335.

⁴² R. Ex. 1 at 58; Tr. at 353.

⁴³ Tr. at 185.

⁴⁴ Tr. 312, 335-36.

⁴⁵ Tr. at 198, 232, 336-37.

⁴⁶ Tr. at 183, 293, 388-89.

⁴⁷ Tr. at 244, 264.

⁴⁸ R. Ex. 7 at 15-16; Tr. at 355.

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).

These four factors need not be accorded any particular weight nor be applied in any particular way. Application of the four factors to the evidence in this case supports the conclusion that the District's program was appropriate in that the IEP designed implemented by the District was reasonably calculated to provide the requisite educational benefit given Student's unique circumstances. *Rowley*, 458 U.S. at 206-20; *Andrew F. v. Douglas Cnty. Dist. RE-1*, 137 S.Ct. 988 (2017).

First, the District's program was individualized on the basis of assessment and performance. As noted, Student was timely evaluated (***). The record establishes that detailed PLAAFPs were established to devise measurable goals with short term objectives for every academic area and for *** therapy and *** skills. Mixed placements in general and special education settings were established to address Student's need to develop essential communication and adaptive behavior skills. Needed related services were identified and delivered as scheduled. The IEP provided "[t]he 'free appropriate public education' required by the Act [that] was tailored to the unique needs" of Student. *Andrew F. v. Douglas Cnty. Dist. RE-1*, 137 S.Ct. 988, 1000 (2017).

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 listened to Mother's concerns and attempted to address and/or mitigate those concerns (*e.g.*, granting Mother's request for more general education time by placing Student in general education *** with special education ***). There is simply no evidence that the District failed to coordinate and collaborate with Mother.

Fourth, the evidence showed the Student did derive an educational benefit from Student's IEP as shown through Student's performance on the *** *** and *** assessments for *** and *** grades, and progress mastering Student's IEP goals. *Rowley*, 458 U.S. 176 (1982).

For these reasons, this Hearing Officer concludes the District's program was reasonably calculated to provide Student with the requisite educational benefits and was, therefore, appropriate. *See, Richardson Independent School Dist. v. Michael Z.*, 561 F.Supp.2d 589, 602 (N.D. Tex. 2007). In other words, Student's IEP was designed to and did provide "meaningful" educational benefit. *Rowley*, 458 U.S. at 192, 102 S.Ct. 3034; *see also Michael F.*, 118 F.3d at 248.

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, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services," 20 U.S.C. § 1401(26)(A).

The purpose of related services is to assist the student in benefitting from Student's special education. 34 C.F.R. § 300.8(a). Student's most recent IEP provided for *** 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 ***.⁴⁹ There was no evidence presented on the need for additional supplementary or related services.

In ***, after Student enrolled in the District for *** grade, Student was fully evaluated within sixty days of enrolling and reevaluated *** months later.⁵⁰ To determine Student's *** ***, the District utilized a variety of valid assessments and measures that were selected to obtain accurate results and were administered by trained and

⁴⁹ R. Ex. 1 at 41.

⁵⁰ R. Exs. 7-8.

knowledgeable personnel.⁵¹ The evaluations revealed that Student's *** proficiency was at the level of ***-year-old and at the *** percent of all students Student's age.⁵²

The District's methodology for teaching *** to Student used a variety of electronic software, three of which are recognized as the "Gold Standard" for teaching *** to students with ***.⁵³

After enrolling, Student's *** grade *** teacher described *** skills as "very, very basic." Student could ***. Student could not *** and Student was unable to work independently. Student knew ***.⁵⁴

Based on multiple observations across numerous settings, assessment results, and identification as a student with ***, ***, and ***, Student was placed into the *** classroom for ***. Placement in the *** classroom was necessary for Student to make progress in *** because *** and *** skills are embedded into the curriculum of all *** classes—essential skills for Student to make academic and nonacademic progress. Mother objected to the *** *** and requested Student be placed in the Resource Class for ***. The majority of students in Resource classes are working at grade level on assignments aligned with the TEKS. Student's modified *** curriculum that emphasizes *** and adaptive behavior skills cannot be delivered in the Resource Class where students are working on grade level assignments.⁵⁵

In this case, whether services were needed can ultimately be determined by looking at progress. Student has demonstrated significant and measurable progress in *** since enrolling in the District. Student passed the *** for *** in both *** and *** grades by scoring *** both years. Maintaining *** proficiency over *** school years

⁵¹ R. Ex. 7 at 25.

⁵² R. Ex. 7 at 26.

⁵³ Tr. at 229-30.

⁵⁴ Tr. at 313, 345.

⁵⁵ Tr. at 264-65.

was academic progress because the *** grade *** *** is more rigorous. Student demonstrated academic progress in *** between *** and *** grade as shown by Student's work on ***.⁵⁶

Petitioner did not present sufficient evidence to show the District failed to address Student's need for services in ***.

E. Issue No. 2: Did the District fail to address Student's need for services in *?**

As with ***, to determine Student's ***, the District utilized a variety of valid assessments and measures that were selected to obtain accurate results and were administer by trained and knowledgeable personnel.⁵⁷ Student's *** placed Student in the *** percentile as compared to other students Student's age and at a *** grade *** level.⁵⁸

The District used a variety of *** curriculum with Student and implemented *** IEP goals vertically aligned to Student's level.⁵⁹

Student was initially placed in the *** classroom for ***. At Mother's insistence, the District reluctantly agreed to place Student in the Resource Classroom for ***.⁶⁰ The District determined placement in the *** classroom is necessary for Student to maximize Student's *** potential because essential *** and adaptive behavior skills are embedded into the curriculum of all *** classes. In the Resource Class the majority of students are working at grade level on assignments aligned with the TEKS.⁶¹

⁵⁶ Tr. at 252-53.

⁵⁷ R. Ex. 7 at 22-23; R. Ex. 8 at 16-17.

⁵⁸ R. Ex. 1 at 2.

⁵⁹ Tr. at 226-27, 350.

⁶⁰ Tr. at 306-07.

⁶¹ Tr. at 264-65.

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 academics, ***, and socialization and is not the LRE.

One of the primary mandates of the IDEA is "mainstreaming," which is the requirement that an IEP place a disabled child in the LRE for Student's education:

In general, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁶⁵

"By creating a statutory preference for mainstreaming, Congress also created a tension between two provisions of the IDEA," the requirement that a school district

⁶² R. Ex. 12.

⁶³ Tr. at 252-53.

⁶⁴ Tr. at 115.

⁶⁵ 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).

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 regular classroom, with the use of supplemental aids and services, be achieved satisfactorily for a given child?”⁶⁹ Second, “If it cannot and the school intends to provide special education or to remove the child from regular education, has the school mainstreamed the child to the maximum extent appropriate?”⁷⁰ The Fifth Circuit further explained, “[A]t the outset of step one, we must examine whether the state has taken steps to accommodate the handicapped child in regular education. . . . If the state has made no effort to take such accommodating steps, our inquiry ends, for the state is in violation of the Act’s express mandate to supplement and modify regular education.”⁷¹

Based on Student’s assessments and unique abilities, the District designed an educational program to be delivered in a mix of general and special educational settings. The preponderance of the evidence proved the District not only considered the LRE, but placed Student in the general education environment to the maximum degree feasible that allows Student to continue to make academic and non-academic progress.

⁶⁶ *Daniel R.R.*, 874 F.2d at 1044.

⁶⁷ *Id.* at 1045.

⁶⁸ *Daniel R.R.*, 874 F.2d at 1045.

⁶⁹ *Id.* at 1048.

⁷⁰ *Id.*

⁷¹ *Daniel R.R.*, 874 F.2d at 1048.

Student's mixed placement in the *** class, general education, and in a Resource class for ***, is necessary for Student to access Student's modified curriculum. The *** classes emphasize socialization, ***, behavior, and ***. Those skills are essential for Student to succeed academically and later in life as an individual with ***. Academics are the sole focus in general education classes; Student's modified general education *** curriculum would be inaccessible to Student but for the *** that occurs in the *** class.

Furthermore, the evidence proved that the District listened to Mother's placement concerns, and when possible went to great efforts to accommodate those concerns based on Student's best educational interests. The District satisfied both prongs of the *Daniel R.R* LRE test and has placed Student in the LRE.

Finally, as reflected by Student's schedule of services, Student spends approximately one-third of every school day mainstreamed, to the maximum extent possible, in general education classes with appropriate accommodations and modifications.

G. Issue No. 4: Did the District fail to provide Student with appropriate positive behavioral supports and services as required by the IDEA?

The preponderance of the evidence showed the District provided Student with appropriate behavioral supports and services.

Student's ***, FIE contained a FBA that involved over *** separate classroom observations. The Assessment Committee, including Mother, agreed there was no need

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 District's Program Appropriate?

Did the District propose or provide Student with an appropriate educational program? The evidence showed it did. First, upon enrolling in ***, Student was timely evaluated and identified as a student with ***, ***, and ***. Since ***, the ARDC has held *** meetings, many of which were reconvened to design Student's educational program.⁷⁸

⁷² R. Ex. 7 at 9-16; Tr. at 335.

⁷³ R. Ex. 1 at 58; Tr. at 353.

⁷⁴ Tr. 312, 335-36.

⁷⁵ Tr. at 198, 232, 336-37.

⁷⁶ Tr. at 183, 293, 388-89.

⁷⁷ R. Ex. 7 at 15-16; Tr. at 355.

⁷⁸ R. Exs. 1-8.

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).

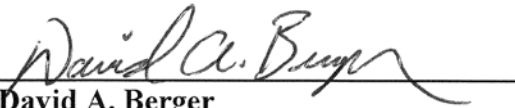
⁷⁹ R. Ex. 1.

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.


David A. Berger
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).