

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENTS	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
LEANDER INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

**DECISION OF HEARING OFFICER**

Petitioner, Student (“Student”), by next friend, Parent (“Parent”) filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The Respondent in the complaint is Leander Independent School District (“District”).

The parties waived in writing the resolution session on March 19, 2012 and pursuant to 34 C. F. R. §300.510 (c), the 45-day timeline began March 20. The parties were granted two continuances, and the due process hearing was held June 14,15 and 22, 2012.

**Claims of Petitioner and Request for Relief**

After dismissal of certain issues for want of jurisdiction, Petitioner’s remaining issues include an allegation of a denial of a free appropriate public education (“FAPE”) and the following specific failures by the District:

1. Removal of the Petitioner from petitioner’s least restrictive environment (“LRE”) contrary to petitioner’s current schedule of services;
2. Failure to provide appropriate educational services, including academic, behavioral and social needs, to meet the Petitioner’s individualized needs;
3. Failure to ensure that all goals and objective in the Petitioner’s individualized education program (“IEP”) are appropriate, measurable and individualized to meet Petitioner’s needs;
4. Failure to properly implement goals and objectives in Petitioner’s IEP;
5. Failure to provide an IEP with goals and objectives for “flex time;”
6. Failure to provide IEP progress reports pursuant to the March 9, 2011 IEP;
7. Failure to assess ongoing academic and behavioral needs so that learning strategies, behavioral interventions, accommodations and modifications, and goals and objectives could be reviewed and revised as necessary to promote progress;
8. Failure to provide current present levels of academic functioning;
9. Failure to modify and accommodate the general education lesson plans according to Petitioner’s IEP;
10. Failure to implement Petitioner’s behavior intervention plan (“BIP”);
11. Failure to implement an appropriate BIP including specific, measurable goals and objectives, individualized to meet Petitioner’s needs;

12. Failure to implement recommendations made by the outside behavior specialist;
13. Failure to implement positive behavioral strategies according to Petitioner's BIP;
14. Failure to provide appropriately trained educational support in the proposed placement, including teachers and related services providers trained in inclusion, behavior, and Petitioner's IEPs and disabilities;
15. Failure to provide in-home and parent training;
16. Failure to provide appropriate transition services to address potential problems when transitioning to a new campus in August, 2011;
17. Failure to provide the Parent with ongoing educational information, data, progress monitoring and access to key implementers of Petitioner's IEP so that the Parent could participate collaboratively in supporting Petitioner's educational program in a meaningful and informed manner;
18. Failure to provide a collaborative atmosphere at Petitioner's admission, review, and dismissal ("ARD") meetings;
19. Interference with parental participation with primary implementers of the Student's education by requiring communication through the communication liaison; and
20. Interference with and attempts to stifle the Parent's participation at ARD meetings by requiring the District's attorney to attend Petitioner's ARD meeting.
21. Failure to revise Petitioner's IEP following the March 30, 2012 progress reports when the District determined that Petitioner would not master petitioner's annual goals;
22. Failure to follow Petitioner's entire schedule of services; and
23. Failure to follow the District's procedures and practices.

Petitioner requests the following relief:

1. An order directing the District to provide Petitioner with a FAPE;
2. An order directing the District to provide compensatory math, language art, occupational therapy ("OT"), and speech therapy services;
3. An order directing the District to provide training to Petitioner's teachers and staff on Petitioner's IEP, behavior, inclusion, and disabilities;
4. An order directing the District to provide an individualized daily communication sheet;
5. An order directing the District to revise IEP data sheets to an appropriately individualized format, and to send home weekly;
6. An order directing the District to write a curriculum modification plan in Petitioner's IEP that includes how often and how long teachers will meet to prepare and collaborate on lessons;
7. An order directing the District to implement modifications and accommodation required in the September 26, 2011 ARD;
8. An order directing the District to conduct a speech evaluation;
9. An order directing the District to provide 4.5 week and 9 week IEP progress reports that report progress aligned with the measurement criteria in petitioner's goals and objectives;

10. An order directing the District to provide the Parent with the educational records they request since the last request for records, and any and all OT records not already provided;
11. An order directing the ARD committee to conduct its meetings in a collaborative manner;
12. An order directing the District to allow the Parent direct access to Petitioner's teachers and staff who work with Petitioner;
13. An order directing the District to allow the Parent the opportunity to schedule and hold parent-teacher conferences with Petitioner's teachers as often as other parents do;
14. An order directing the District to allow the Parent to communicate with all of Petitioner's teachers and staff as other parents are allowed;
15. An order directing the District to remove the requirement that communication with Petitioner's teacher be directed to the communication liaison;
16. An order directing the District to stop harassing the Parent by having a District attorney present at all ARD meetings and routine educational and behavioral meetings held for Petitioner;
17. An order finding that the District denied Petitioner a FAPE;
18. A finding that the Parent is the prevailing party in the hearing officer's decision; and
19. Any other compensation the hearing officer sees fit to award.

### **Respondent's Counterclaim**

On April 12, 2012, Respondent filed its counterclaim and requested a finding that it provided the Student with a FAPE and that the February 15, 2012 ARD committee's proposed placement for the Student is appropriate.

### **Findings of Fact**

1. The Student is an \*\*\*-year old child who resides within the geographical boundaries of the Leander Independent School District. The Student is eligible for special education services from the District under the IDEA as a child with an intellectual disability (reflected in 34 C. F. R. §300.8 (c)(6) as mental retardation), other health impairment as a child with Down Syndrome, and speech impairment. Joint Exhibit Respondent-46 (hereinafter Jt. Ex. R-\_\_\_)
2. The Student's cognitive abilities are in the extremely low range. Verbal communication is minimal. \*\*\*. Prior to the introduction of \*\*\* in 2011, a \*\*\* was used. The Student has consistently had 1:1 support of an instructional aide. P. Ex. 36; Jt. Ex. R-2-3
3. Historically, the Student's behaviors included noncompliance, escape as a task avoidance, and elopement. During the 2011-2012 school year, the Student continued to display these behaviors. Incidents of elopement decreased over the course of the year. Petitioner Exhibit 11-18 (hereinafter P. Ex. \_\_); Jt. Ex. 12, 156; Jt. Ex. R-29
4. In 2010, Dr. \*\*\* conducted a neuropsychological evaluation of the Student. Due to the Student's limitations in communication and inconsistent responses to novel tasks and settings, the primary methods of data collection for Dr. \*\*\* evaluation were observation of the Student in settings familiar to the Student, along with input from the parents and classroom teachers. Jt. Ex. R-29
5. Antecedents of the Student's behaviors were teacher directives. The function of student's behavior appeared to be primarily escape from a non-preferred task or the postponement of the transition away from a preferred task. Transcript Volume II, page 617 (hereinafter Tr. Vol. \_\_, pg. \_\_); Jt. Ex. R-29

6. The Student's relative strengths are in the area of nonverbal and spatial reasoning, and relative weaknesses in receptive and expressive language. The Student has difficulty with generalization, application and comprehension of learned information. Dr. \*\*\* recommendations for instructional process included the following: utilization of multisensory instructional strategies, with emphasis on visual and spatial skills; use of manipulatives and opportunities for hands on applications in all subject matter areas; visual cues and schedules; check for initial understanding and redirect as needed throughout an activity to ensure that the Student could remain on task, and instruction in small increments. Jt. Ex. R-29
7. Dr. \*\*\* made the following recommendations as strategies for working toward behavioral goals and objectives: focus on social rather than edibles and other tangible reinforcers; increase the frequency of reinforcement with a transition to a variable reinforcement schedule; minimize social interaction during corrective sequences; limit eye contact and use a monotone presentation and follow up with clear positive social reinforcement as soon as the Student resumed compliant behavior; incorporate the reinforce into the instructional task when possible; move from a 1:1 model of intensive instruction to a 1:2 model so that the Student could benefit from peer modeling and passive reinforcement of both appropriate behavior and academic concepts. Jt. Ex. R-29
8. Dr. \*\*\* recommended a social skills IEP. Jt. Ex. R-29
9. Additional recommendations from Dr. \*\*\* included: follow a reverse inclusion model to allow the Student to interact with single or small groups of classmates rather than contending with the class as a whole; consider use of a peer mentor; continue to work toward a more functional social communication system for the Student. Jt. Ex. R-29
10. In 2010, Dr. \*\*\* conducted a functional behavioral assessment ("FBA") of the Student with regard to behavioral issues at home and to generate recommendations for an in-home/parent training program with emphasis on compliance and interactions with the Parent and sibling. Her recommendations for behavior management at home were aligned with her recommendations for school strategies. Jt. Ex. R-29
11. The ARD committee reviewed the results of Dr. \*\*\* evaluations and added behavior and parent training goals. Academic goals were modified to reflect evaluation information. Jt. Ex. R-30
12. The Student attended \*\*\* during student's \*\*\* grade year (2010-2011). Student's schedule of service was as follows:
  - a. General Education: 60 minutes per day ("min.")- language arts; 30 min.-math; 55 min.-social studies/science; 25-30 min.-flex time; 50 min.-PE/specials
  - b. Special Education: 75 min.-language arts/reading; 45 min.-math; 15 min.-sensory activities within therapy classroom
  - c. Speech therapy: 16-30 minute sessions for remainder of 1<sup>st</sup> 9 weeks; 20-30 minute session per 9 weeks for remainder of IEP year. Jt. Ex. R-46
13. After disagreement at the 9/8/10 annual ARD, the committee reconvened on 9/20/10. The committee accepted some of the Parent's requested changes to the PLAAFP, goals and objectives, and training for specific teachers, and rejected other areas of disagreement. The Parent stated that the Student's progress could have/should have been greater. The Parent disagreed with the ARD decisions. The District sent its notice of decision to the Parent. Jt. Ex. R-46, 47
14. Present levels of academic achievement and functional performance ("PLAAP") were given for reading, speech, adaptive PE, and math. Strengths and areas for growth were detailed. Accommodations, psychological services and a BIP were put in place. The use of a picture exchange communication system ("PECS") was included. The ARD committee developed goals and objectives in reading/language arts, spelling, math, science, social studies, behavior, PE, speech/communication and in-home training. Jt. Ex. R-46

15. Modifications/accommodations were included for use in all academic and specials classes, as follows: visual schedule, picture cues along with short verbal directions, use of proximity at the Student's level, opportunities to \*\*\*, ignore selected behaviors, consideration of the use of a visual timer, incorporation of reinforcers into instructional task when possible and allow the Student the use of other forms of augmentative communication. Verbal scripts for redirection included, "You need to stop," "You need to look at me," and "Say okay and do it right away." Assignments were to be reduced. The Student was to have special projects in lieu of assignments or alternate assignments. Instruction was to be altered by the provision of short instructions, visual aids, extra time for oral response and for written response, frequent feedback, encouragement for classroom participation, peer tutoring or paired working arrangement, and specialized curriculum. Materials were to be adapted by alteration of the format and use of study aids/manipulatives. Behavior was to be managed by the provision of frequent reminder of rules, positive reinforcement, frequent eye contact/proximity control, frequent breaks, seat near the teacher, supervision during transition activities, following the Student's BIP, reduction of distractions, and small group instruction. Jt. Ex. R-46
16. The Student's BIP included the following strategies to teach replacement behavior: visual schedule, small group learning environments with teacher selected, appropriate peers, and use of social stories with pictures of the Student. Reinforcers that could be used after the Student demonstrated compliance to a direction included social reinforcers such as high fives, praise, and side hugs, consideration of edible reinforcers, and the use of a preferred object with a visual timer. The BIP included consequences to non-compliant behavior to teacher directives such as holding the demand, verbalizing expectation during the problem behavior, delayed reinforcement until the Student complied with the directive, designated quiet area without access to reinforcers using a visual timer, and consideration of the use of compliance techniques. Jt. Ex. R-46
17. The Student's IEP was amended in January, 2011 to include parent training and a parent training objective. The training was not fully completed by the end of the school year. On May 24, 2011, the Parent suggested and forfeited the number of hours that the District was responsible for parent training. The May 26, 2011 ARD committee determined that 3.5 hours of parent training would be carried over to the next school year and completed by September 20, 2011. The Parent agreed to the ARD decisions. Jt. Ex. R-54, 63, 138; P. Ex. 35; Respondent Ex. 62 (hereinafter R. Ex. \_\_)
18. At the February, 2011 ARD, the committee agreed to conduct a Parent requested assistive technology ("AT") needs-assessment and evaluation. The Parent agreed to implementation of the Student's BIP and a 45-minute increase in time in the \*\*\* setting. The \*\*\* room is designed for students with significant disabilities. Jt. Ex. R-56; Tr. Vol. I, pg. 188
19. Due to an increase in task avoidance, the February, 2011 ARD committee amended the Student's BIP and added the use of a structured reinforcement system with a focus on positive behavior. The use of edible reinforcers for more challenging/lower interest activities and/or as a random reinforcer was included until behaviors toward goals progressed. Then, there was to be a transition from edible reinforcers to tokens. Consequences to non-compliant behavior to teacher directives included the use of undesirable highly structured activity for aggression toward self or others (that does not meet the criteria for containment/restraint.). Jt. Ex. R-56
20. The ARD committee reconvened March 9, 2011. In-depth discussion occurred regarding data collection. The Parent questioned the District's standard for data to be collected at least twice weekly. The Parent acknowledged that she was aware that a data collection method is not part of an IEP. Jt. Ex. R-59
21. The Parent requested a tailored communication sheet, indicating that the form the District used was insufficient. The Parent agreed that a communication sheet is not a mandated part of the ARD. Jt. Ex. R-60

22. In May, 2011, the District and Parent agreed to the schedule of services that included 60 minutes of language arts time and 30 minutes of math time in the general education class. No flex-time was scheduled. This amounted to a 30-minute reduction of time in the general education setting. The Parent stated that the Student had made some great progress that year. Jt. Ex. R-63
23. At the end of student's \*\*\* grade year, the Student had either mastered or was on target for mastery of both academic and behavioral goals. Progress was not reported on those goals involving a communication board because trials with the \*\*\* were ongoing. Jt. Ex. R-64
24. During ESY 2011, the Student maintained all objectives. Jt. Ex. R-66
25. The Student moved to \*\*\* for student's \*\*\* grade year. Tr. Vol. II, Pg. 474-5
26. To prepare for the Student, the \*\*\* teacher observed several \*\*\* classrooms and spent time with the Student's \*\*\* grade teachers. During the summer, she familiarized herself with the Student's records, progress reports and annual ARD documents. Meetings were held with the District's lead LSSP, its behavior specialist, assistive technology specialist and speech therapist. The \*\*\* teacher took the \*\*\* and learned to \*\*\* program that the Student would use in the 2011-2012 school year. Tr. Vol. I, pg. 171, 193-5
27. In May and August, 2011, the Student did transition visits to the new campus of \*\*\* School. The Parent met with the Superintendent of Schools, the \*\*\* principal during the August transition visit. A staffing was held during that same time period. Jt. Ex. R-157; P. Ex. 36, 75
28. On September 1, 2011, the Assistive Technology Specialist met with the Parent. P. Ex. 37
29. Prior to the beginning of the 2011-2012 school year, the \*\*\* grade general education teacher reviewed the Student's records and BIP. Tr. Vol. I, pg. 108
30. The Student had more than one instructional assistant that worked with student during student's \*\*\* grade year. One assistant testified credibly that she had worked five years in the District with most of her experience in inclusion and learning lab settings. She attended four paraprofessional instructional assistant meetings that are held each October. She received training in applied behavior analysis, anger management, and data collection. In October, the instructional aides were trained on the use of reinforcement folder and behavioral momentum. In February, 2012, the assistant attended Down Syndrome training. P. Ex. 57; Tr. Vol. pg. 161-2
31. Prior to the Student's annual ARD in September, 2011, the Student's teachers met with each other and with the District's behavior specialist that was involved with the Student during the prior year. Staff reviewed the data and prior goals and objectives. The teachers met with the Parent to discuss proposed goals and objectives. Jt. Ex. R-157
32. Three weeks into the 2011-2012 school year, the Student's annual ARD meeting was held September 14, 2011 and reconvened September 26. The Parent provided the District with her input for goals and objectives for the Student's academics, speech therapy and assistive technology goals and objectives. The Parent wanted to fade out use of edibles. Discussion occurred regarding the District's data. Data was taken on objectives that were not in the Student's IEP. The Parent requested that the terms "\*\*\*\*" and "\*\*\*\*" be added to the IEP and the District agreed. At the Parent's request, the Student's \*\*\* was to be used through the Student's day. The Parent disagreed with the ARD decisions. Jt. Ex. R-157; R. Ex. 72; P. Ex. 19, 37; Tr. Vol. I, pg. 241-2
33. The Student's PLAAFP at the September annual ARD meeting included detailed areas of strength and growth based on student's previous school's data and the Brigance Comprehensive Inventory of Basic Skills II. The District had been unable to gather sufficient data during the first three weeks of school due to the

Student's behaviors, and thus, determined that the previous year's data would be a more reliable PLAAFP. R. Ex. 135; Tr. Vol. III, pg. 890-903

34. During \*\*\* grade, the Student's schedule of service was as follows:
  - a. \*\*\* grade general education: 60 min.-language arts; 30 min.-math; 30 min.-social studies; 45 min.-science; 50 min. PE/specials
  - b. Special Education: 60 min.-language arts; 45 min.-math;
  - c. Speech therapy: 36-15 min. sessions per 9 weeks. Jt. R-Ex. 76
35. During student's \*\*\* and \*\*\* grade years, the Student's schedule of services included lunch, recess, PE, and specials with student's general education classroom with 1:1 adult support in all general education settings. Student also received OT, psychological, adapted PE, and AT services. Jt. Ex. R-46, 76
36. The Student's September, 2011 IEP was amended in October to add in-home and parent training in the amount of 4 hours per month of support from the behavior specialist to include 3 hours observation and consultation in the school setting and one hour of direct service with the Parent. The Student's BIP included a note that the Student's team would meet for regularly scheduled brainstorming sessions to review outcomes and results of the BIP. The first brainstorming session was held in January, 2012. P. Ex. 60; Jt. Ex. R-80
37. The Student's \*\*\* grade BIP included strategies for replacement of unwanted behaviors such as use of a structured reinforcement system, a visual schedule, small group learning environments and social stories. Edible reinforcers were used for more challenging interest activities; as behavior toward goals progressed, there was to be a transition from edible reinforcers to tokens. The Student liked to choose student's own reward and a token system was used. It consisted of a certain number \*\*\*. Once the Student earned a certain number of \*\*\*, student could get student's reward. Student might choose \*\*\*, \*\*\*, or perhaps a "high five" or hug, or a video clip on the computer \*\*\* as student's reward. Jt. Ex. R-76, 157
38. During \*\*\* grade, the Student used manipulatives in math and studied addition and subtraction. Spelling consisted of words with short vowels and doubled consonants. P. Ex. 11-18
39. The general education teacher, who is also certified in special education, testified that the Student's language arts goal was implemented. The Student was able to copy a sentence with a model that was teacher given. The Student was unable to generate student's own sentence. The Student showed good progress on student's science goals. Student was able to correctly label student's observations after manipulation of a model. Student's social studies goals required sequencing and positional words. The staff took the social studies events that were being taught and had the Student put them in the correct order. The Student had difficulty in social studies. Tr. Vol. I, pg. 60; Tr. Vol. III, pg. 763-767
40. The Student's general education routine was to arrive in the classroom, put away student's backpack, review the day's schedule and go over all of the social stories. Tr. Vol. III, pg. 813
41. During the 2011-2012 school year, the staff met regularly with behavior specialists and consulted with them weekly regarding the Student's behaviors. Tr. Vol. III, pg. 788
42. At a February 15, 2012 ARD meeting, the District recommended reducing the Student's time in general education to the following: 30 min. -reading, 45 min.- science, 50 min.- PE/specials, plus lunch and recess. The recommendation for special education \*\*\* time included 90 min.-language arts, 75 min.-math, 30 min.-social studies and 25-30 minutes of flex time. The District's reasons for proposing increased time in the \*\*\* room were that the Student's behaviors impacted the learning of others and student made greater progress on student's goals and objectives in the special education setting. Student was mastering more of student's goals in the more structured environment. Among other objections, the Parent disagreed with the recommended reduction of general education time. Jt. Ex. R-91

43. The February, 2012 reconvened-ARD ended in disagreement. The District members of the ARD committee felt that compliance issues were a concern and the team could not effectively implement the behavior strategies in the general education setting. Further, the learning of the Student's peers was being disrupted and student's behavior adversely impacted instruction in the general education setting. The Parent disagreed with the District's behavior data. Implementation of the new placement was to begin March 7, 2012. Jt. Ex. R-94
44. During the 2011-2012 school year, the District took data on behavior and academic goals and objectives. R. Ex. 116, 118, 119, 120, 121
45. The District summarized the data by week and 9-week periods. It summarized data by the Student's behavior goals of "compliance," "sharing," and "emotions," and reflected student's progress by three categories: \*\*\*, general education, and specials. R. 123
46. Behavior data for 4 9-weeks of 2011-2012 reflected progress overall in the three behavior goals. R. Ex. 123
47. The Student made more progress in the compliance goal while in the \*\*\* room where student performed at 68% in the 1<sup>st</sup> 9 weeks, and 91% in the 4<sup>th</sup> 9 weeks. Student's progress decreased in the general education setting where student performed at 57% during the 1<sup>st</sup> 9 weeks, and 41% during the 4<sup>th</sup> 9 weeks. R. Ex. 123
48. The Student made more progress in the sharing goal while in the \*\*\* room where student performed at 65% during the 1<sup>st</sup> 9 weeks, and 90% during the 4<sup>th</sup> 9 weeks. In the general education setting, the data reflected that progress went down from 66% in the 1<sup>st</sup> 9 weeks to 50% during the 4<sup>th</sup> 9 weeks. R. Ex. 123
49. In the emotions goal, the Student's progress increased from 71% to 98% in the \*\*\* room. Student's progress increased from 57% to 86% in the general education setting. R. Ex. 123
50. From early May, 2011, approximately 11 parent training and consultation were conducted. R. Ex. 124
51. During the 2011-2012 school year, the AT Specialist, Behavior Specialist, and LSSP conducted frequent campus/teacher consultations to provide staff training and discuss various segments of the Student's education program. R. Ex. 125, 132
52. In January, 2012, using teacher data and observation and teacher made tests, the District anticipated that the Student's progress was sufficient to achieve approximately 69% of student's academic objectives by the next annual ARD date. The District anticipated that student would achieve all behavioral objectives by the same time. R. Ex. 129
53. The Brigance Comprehensive Inventory of Basic Skills II was administered to the Student in January and May, 2011 and in May, 2012. In 2011, the Student recognized words on a \*\*\* level. In 2012, student recognized words at the \*\*\* and \*\*\* grade levels. Student's basic sight word vocabulary increased along with student's ability to read warning signs. Student capitalized the beginning of sentences and appropriately used periods, question marks and exclamation marks at the end of sentences. R. Ex. 135
54. On the math portion of the Brigance, the Student represented quantities, added and subtracted whole numbers by modeling joining/separating situations. Student identified plane and solid figures, compared sets of object and ordered objects by size and length. Student knew or recalled basic addition and subtraction facts, compared whole numbers, and identified an described plane figures. Student understood most positional and directional concepts included on the assessment. Student described position in a sequence of "first" and "second." Using concrete models, student solved word problems with addition and subtraction, gave sums to 13-18 and differences with minuends of 13-18. R. Ex. 135

55. "Hold the demand" is a strategy used to teach a child that maladaptive behavior does not get him what he wants. A demand is given and held until the child follows through with the directive. The Student struggles with this strategy, and student's behavior has been disruptive in the general education setting. Jt. Ex. R-156
56. The Student is a visual learner. Customarily, visual cues are 2x2" pictures that identify what the child should do. If a verbal directive is given and the child doesn't respond, then, one points to the picture. During the 2011-2012 school year, visual cues were available in the general education room as a positive behavior support. Jt. Ex. R-156
57. The District retained \*\*\*, an outside behavior consultant, who provided parent training for the Parent during the 2010-2011 school year; during the 2011-2012 school year, the consultant provided school support during which time she observed the Student and student's behaviors, the strategies being used and their efficacy, coached the staff, and created strategies. The behavior consultant testified that social stories were in place during the time that she worked with the Student. \*\*\* started developing social stories beginning February, 2012. Because handwriting and transition were issues for the Student, \*\*\* worked on a handwriting and recess social stories. Jt. Ex. R-138, 156
58. The Student also had social stories on work, bathroom behavior, and breaks. Tr. Vol. I, pg. 201
59. \*\*\* testified that compliance is the behavior that interferes most with the Student's education progress. The highest probability of getting compliance is to have positive behavior supports in place, to analyze the behavior and have the right reinforcers ready to go. \*\*\* testified that she saw that happen in the District. Jt. Ex. R-156
60. \*\*\* testified that when the Student was not responsive to "hold the demand," among other strategies, the District staff used redirection, 5,4,3,2,1 countdown to attain compliance, and "first-then" ("First we will do \_\_\_\_\_, then we will do \_\_\_\_\_"). The 5,4,3,2,1, countdown strategy was used usually on the Student's \*\*\* to help prepare student for a change in activities. Jt. Ex. R-156
61. The behavior consultant testified that she witnessed reinforcement of positive behaviors being used across settings and across people. The Student struggled in the general education setting and in the hallway and exhibited elopement behavior a lot. The staff used every strategy on the Student BIP and more. The behavior consultant testified that the Student had more self-control when student was in less stimulating settings, and exhibited a greater level of compliance with strategies when they were implemented in the special education room. Jt. Ex. 156
62. The District used visual schedules and social stories with the Student during student's \*\*\* grade year. Tr. Vol. I, pg. 175-7, 203-4
63. \*\*\*, a board certified behavior analyst, was asked by the Parent to do an evaluation of the Student's behaviors in both the home and school. Based on her observations and data, her June, 2012 report reflected that the Student was most compliant when working with student's private tutor on a 1:1 basis. She testified that she saw more compliance with the Student worked with student's parents in preparation for a meal than while student was at school. Student was least complaint in the general education setting at school. P. Ex. 87; Tr. Vol. II, pg. 301-317, 378-79
64. \*\*\* opined that the Student was not learning to model behavior from student's general education peers. Tr. Vol. I pg. 394-5
65. The Parent and District communicated often regarding the Student's education program. Jt. Ex. R-67, 97, 100,104, 105, 106, 107, 108, 110, 112, 113, 127, 151, 152, 153; P. Ex. 26-53, 62-63; R. Ex. 41, 21-24, 26 Tr. Vol. II pg. 521-533, 536

66. Near the beginning of the 2011-2012 school year, the Student's \*\*\* teacher was designated as the point of contact for parent communications. At some point in the year, due to the number of communications from the Parent to various staff members, the District hired an individual to handle the communications. Tr. Vol. I, pg.; Vol. III, pg. 760-762
67. The District provided daily communication logs for the Student. P. Ex. 1-18; R. Ex. 65, 118; Tr. Vol. II, pg. 534-537
68. The District kept data on IEP data sheets. P. Ex. 19-25, 84-86
69. During the first 3 weeks of the Student's \*\*\* grade, the \*\*\* teacher called the Parent approximately 14 times. The general education teacher called the Parent at the end of the first day of school. Tr. Vol. II, pg. 510-11
70. During the Student's \*\*\* grade year, the Parent had approximately 9 parent-teacher or brainstorming meetings. Tr. Vol. II, pg. 514-17
71. The Parent received IEP progress reports every nine weeks. Tr. Vol. II, pg. 539-540
72. The general education teacher provided written summaries of the Student's general education at the progress meetings which occurred midpoint of the nine weeks grading period. The summaries included anecdotal notes and patterns and trends of strategies that worked well. Tr. Vol. III, pg. 821-22, 828; R. Ex. 146
73. From the last 9 weeks of the 2010-2011 school year through the 3<sup>rd</sup> 9 weeks of the 2011-2012 school year, the Student made progress in most of student's behavior goals. R. Ex. 123
74. In January, 2012, the Student made academic progress sufficient at that time for student to achieve objectives by the next annual ARD date in 15 of 22 objectives. Both the Student's private tutor and student's \*\*\* teacher testified that student made progress in student's \*\*\* grade year. Jt.-R. Ex. 129; Tr. Vol. I, pg. 43-44; Tr. Vol. III, pg. 903
75. The Student's behaviors made it difficult to teach in the general education class. The writing teacher devoted a large amount of time at the Student's table. Tr. Vol. II pg. 331-2
76. The occupational therapist implemented the Student's modifications that were in student's IEP, and consulted with student's teachers. The Student utilized tri-lined paper and a slantboard, as a trial. Other modifications included a box around a word to provide boundaries for placing letters to improve sizing and alignment. Tr. Vol. I, pg. 132-7

### **Standard of Review**

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate services as necessary to provide a free and appropriate public education (FAPE). The educational program must be meaningful, and reasonably calculated to produce progress as opposed to *de minimis* advancement. 20 U.S.C. § 1412(a)(1); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997); *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5<sup>th</sup> Cir. 1989). In order to ensure that each student receives a FAPE, parents and school districts collaborate to develop an Individualized Education Plan ("IEP") that is "reasonably calculated to enable

the child to receive educational benefits.” 20 U.S.C. § 1400 (d)(1)(A); *R.H. v. Plano Indep. School Dist.*, 607 F.3d 1003, 1008 (5th Cir. 2010).

A petitioner who challenges the school district’s eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005). The school district’s plan is presumed to be appropriate. *R.H.*, 607 F.3d 1003. The party attacking the plan bears the burden of proof, by a preponderance of the evidence, of demonstrating why it does not comply with the IDEA. *Id.* at 1010-11.

The Fifth Circuit has further defined a FAPE by delineating four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child’s assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated? *Cypress Fairbanks*, 118 F.3d at 253.

When a parent challenges the appropriateness of an IEP, two questions must be asked: whether the state has complied with the procedural requirements of the IDEA, and then, whether the IEP developed through such procedures was “reasonably calculated to enable the child to receive educational benefits.” *Rowley*, 458 U.S. at 206-07.

Placing a disabled child in the LRE is one of the primary goals of IDEA. *Daniel R.R.*, 874 F.2d at 1044, 1045. An IEP must place a disabled child in the LRE required by his needs. *R.H.*, 607 F.3d at 1008. That is, a disabled child should be placed in special classes only when education in regular classes with the use of supplementary services cannot be achieved satisfactorily. 20 U.S.C § 1412)(a)(5)(A); see *Daniel R.R.*, 874 F.2d at 1039. Congress’s preference for what is known as “main streaming” must be balanced with the reality that general education is not suitable for all disabled students. *Daniel R. R.* at 1044, 1045. In evaluating a school’s proposed educational program, the court adopted the following two-part test: 1) Can education in the regular classroom, with the use of supplemental aids and services, be achieved satisfactorily, and 2) Has the school mainstreamed the child to the maximum extent appropriate? *Daniel R. R.* at 1048. It suggested that the following factors should be considered: 1) the steps taken by a school to accommodate the disabled child in general education; 2) the extent to which the student receives an educational benefit from general education; and 3) the effect the disabled student has on the general education population. *Id.* at 1048-49.

### **Discussion**

The Parent and District have a long history of disagreements regarding the Student’s education program, the amount and veracity of data collection, complaints and personnel grievances. Because of past tensions, they agreed that a “fresh start” was needed. Consequently, the Student transferred to \*\*\* School for student’s \*\*\* grade year. A new \*\*\* room was opened, and a certified special education teacher was assigned.

September, 2011 ARD: The Student’s annual ARD meeting was held September 14, 2011, approximately 3 weeks into the 2011-2012 school year. After ending in disagreement, it reconvened on September 26.

The Parent questioned the appropriateness of using \*\*\* grade present levels of academic achievement and performance. Appropriately, the PLAAFP was based on data from the end of student's \*\*\* grade year, the Brigance testing that was done at that time, and information from the extended school year teacher that the Student had maintained student's skills throughout the summer.

While the Parent disagreed with the IEPs, the evidence supports a finding that appropriate consideration was given to the Student's strengths, the parents concerns for enhancing student's education, and student's academic, developmental, and functional needs. The most recent evaluation was considered. The Student's behaviors were discussed and the general education teacher explained the successful strategies that were used.

Because student's behaviors impede student's learning or that of others, the IEP team considered and developed positive behavioral interventions and supports and other strategies to address student's behaviors. Due to the Student's communication needs, the IEP team provided an \*\*\* as a communication device. Speech services, OT, and psychological services were included, as well as adapted PE. The Parent actively participated in the revision of certain IEP goals. The general education teacher participated in the development of the Student's IEPs.

For the first few weeks into the \*\*\* grade, the District took data on objectives that were no longer in the Student's IEP. The error was corrected. Although the District failed to appropriately implement the IEP at the beginning of the \*\*\* grade year, the discrepancy was *de minimis*. When reviewing the evidence regarding implementation for the applicable time period, the evidence supports a finding that overall, the Student's goals and objectives were implemented. There was no evidence that the District did not implement the current goals. The implementation of goals and objectives that were no longer in the Student's IEP neither resulted in a loss of FAPE nor a loss of educational opportunity for student. *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003)

At the time of the ARD meeting, the District was providing data to the Parent every 3 weeks. The Parent questioned the amount and quality of the District's data, and requested progress reports every 4.5 weeks. In lieu of that, the District offered to meet with her at the mid-point of the 9-week grading period.

February, 2012 ARD: Due to the Student's behaviors in the general education setting, an ARD was held to discuss student's placement. The attempts to "hold the demand" with the Student were disruptive to the other students' learning and to the teacher's ability to teach. The general education room had to be cleared of the other students approximately 10 times. At the ARD meeting, one Parent suggested the use of a seat belt to restrict the Student. The other Parent suggested use of a baby gate or cardboard barrier. District staff felt these suggestions were restrictive and did not accept the suggestions.

The District witnessed more success with the Student while student was in the \*\*\* setting and saw increased language practice from student. Student's behaviors were more difficult to manage while in the general education room. For example, in the general education room, the Student would \*\*\*. When student exhibited the same behavior in the \*\*\* room, teacher \*\*\*, and after time, the Student \*\*\*. The same strategy is not feasible in a general education setting.

The District's behavior specialist recommended more time in the highly structure environment. The general education teacher believed that the Student's behavior was highly disruptive to the teaching process and the general education peers.

The District's Licensed Specialist in School Psychology ("LSSP") recommended more time in \*\*\* and commented that holding the demand in the general education setting is difficult and thus could prevent the Student from meeting student's academic potential.

The District explained the basis for its recommendation to increase time in the \*\*\* room for certain subjects. Since science is a "hands on" activity, the Student's general education experience is better during that time; further student receives social opportunities during that subject. Because student does better in small group settings, the committee recommended that student continue in general education for small group reading time. Based on the reasons given and in order for the Student to best achieve student's goals, the District recommended 30 minutes for Language Arts and 45 minutes for science, along with lunch recess and specials in a general education setting. The committee recommended that the Student would have a better chance for success in social studies, math, and the remainder of language arts, if student were instructed in the more structured \*\*\* setting. Because compliance with teacher directives is difficult for the Student, the committee believed that compliance would increase in the more structured setting, as well. The Parent disagreed.

At the reconvened ARD meeting, behavior goals were discussed and revised. The Parent's input was considered and accepted. For example, a goal of recognizing emotions was limited to few emotions at the Parent's request. Also, the Parent requested and received an increase from 80% to 90% as mastery criteria.

Regarding placement, the District again explained the need for more structured learning environment for the Student and the higher rate of success in compliance by the Student when in the \*\*\* room.

Disagreement occurred on many subjects including harmful effects on the Student if student's placement were changed, training of District staff, and modification of the Student's work. After disagreement, the Student's placement change was to take effect March 7, 2012. The Parent filed its request for due process hearing on March 6 and stay-put took effect and the Student's program remained intact.

### **Free Appropriate Public Education**

In determining if the Respondent provided a FAPE, consideration is now given to the four factors in *Cypress Fairbanks*:

1) Is the educational program individualized on the basis of the child's assessment and performance? A review of the Student's IEPs reflects that the ARD committee considered the Student's strengths, the concerns of the Parent, the results of the most recent evaluation and student's academic, developmental and functional needs. Much discussion occurred regarding student's behaviors and their affect upon student's ability to receive an education. The committee discussed the various positive interventions, supports, and strategies that worked for student, and put numerous accommodations and modifications in place. Because of student's communication difficulties, the IEP called for a communication device. In addition, although the Parent believed student should

have more time, the Student was provided speech therapy. The Student's IEPs were reviewed at least annually. The Respondent followed the procedures in the IDEA.

The Petitioner brought forth the issue of failure to provide an IEP goal and objectives for flex time. Flex time is a time when a student works on unfinished projects. For the Student, it is a time for student to brush up on a mastered skill, or work on a new skill. Flex time does not require a goal or objectives.

The Student's BIP was based on the most recent FBA and it included some of the recommendations of Dr. \*\*\*. The District's outside behavior consultant made numerous recommendations, some of which the District accepted. Note is made that a District is not required to accept any or all recommendations made by an evaluator or consultant. The Student's goals and objectives were measurable and individualized to meet student's needs. For example, a behavior goal was for the Student to remain in the place designated by the teacher with no more than two prompts following the initial request 80% of measured opportunities. The goals pass the "stranger test." Under that test, an IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student's progress on the goal, and determine whether the student's progress was satisfactory. *Mason City Community Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

The Petitioner's outside behavior analyst spent approximately 3 ½ hours observing the Student at school. Despite the contradiction with her opinion, numerous District witnesses testified that the BIP, including interventions and strategies, was implemented appropriately. The evidence supports a finding that the Student's program was reasonably calculated to enable the child to receive educational benefits, and was individualized on the basis of assessments and performance.

2) Is the program administered in the least restrictive environment? During the \*\*\* and \*\*\* grades, the Student received student's individualized program in both a general education and special education setting. As student's needs required, the number of minutes were changed. The evidence supports a finding that, during the applicable time frame, the program was administered in the least restrictive environment.

3) Are the services provided in a coordinated and collaborative manner by the key stakeholders? The overwhelming evidence supports a finding that the services were provided in a coordinated and collaborative manner by the key stakeholders. The general education and special education teachers met many times a week to discuss the Student's academic and behavioral needs. They reviewed the strategies that were working and those that were not working. The District's LSSP and behavior specialist met with the campus staff regularly. They trained staff, discussed the Student's needs and the successful strategies and interventions that were used. The District retained the services of an outside consultant who observed the Student, made recommendations and trained District staff. The Parent was included on mid-nine week period meetings and brainstorming meetings. The Parent made many suggestions for the Student's IEPs and the District accepted some of those suggestions. The evidence reflects that two brainstorming meetings occurred, but is unclear regarding additional meetings.

Petitioner alleges a failure by the District to provide appropriate transition services when the Student transitioned to a new campus in August, 2011. The evidence does not support the allegation.

The IDEA requires transition services to facilitate a child's movement from school to post-school activities. 20 U.S.C. 1401(34). Regardless, the District staff began preparation for the Student's arrival at \*\*\* in the spring/summer, 2011. The \*\*\* teacher visited with the Student's \*\*\* grade teacher, visited \*\*\* rooms, and familiarized herself with the Student's records. Knowing that the Student used an \*\*\* with the \*\*\*, she familiarized herself with it. The general education teacher learned of the Student's assignment to student's class a week before school began. She familiarized herself with the Student's IEP. The District LSSP and behavior specialist met early on with the campus staff regarding the Student and student's needs.

Although the Parent alleges that the District failed to provide student with ongoing educational information, data, progress monitoring and access to key implementers of the Student's IEP, the overwhelming evidence shows otherwise. The Parent met with the staff to brainstorm ideas. The district specialist for low incident populations met with the Parent. Mid-nine week meetings were held with the Parent to discuss the Student's progress. In addition to the staff who were directly involved in the Student's program, the principal at student's school had meetings with the Parent. Progress reports and daily communication logs were provided.

The Parent alleges that the District failed to provide a collaborative atmosphere at the ARD meetings. A review of the evidence shows that the Parent was allowed a great amount of time to discuss her concerns during the ARD meetings. When the first ARD meeting was held after the Student's transfer to \*\*\* for a fresh start, laughter is heard on the tape recording. The Parent participated fully in the meeting.

Although the Parent alleges that the District required its attorney to attend the ARD meetings to stifle the Parent's participation, the evidence shows that the Parent was not stifled. She repeatedly expressed her dissatisfaction with the District's program, and made numerous comments and suggestions. Further, there is no regulation in the IDEA that forbids either party from having an attorney or parent advocate present.

4) Are positive academic and non-academic benefits demonstrated? The Parent believes that the Student's program was not devised or implemented appropriately. She argues that the District's data is deficient. However, in support of her argument that the Student's placement should remain the same, she relies on the District's progress documentation, arguing that the Student made progress and thus, student's time in general education should not be reduced. The evidence supports a finding that positive academic and non-academic benefits are demonstrated. The Student made progress during the relevant time period.

### **Least Restrictive Environment**

Petitioner's issues are many; however, at the heart of this case is the issue of LRE. The District's counterclaim requests a determination regarding its February, 2012 placement recommendation. The recommendation is to place the Student in the \*\*\* room for 90 min.-language arts, 30 min.-social studies, 75 min.-math, 25-30 min. flex time. The recommendation is for student to have 45 min.-science, 30 min.-reading, and 50 min.-PE/specials in the general education setting, along with lunch and recess.

To the maximum extent appropriate, the Student is to be educated with children who are nondisabled; and student's removal from the regular educational environment should occur only if the nature or severity of student's disability is such that education in regular classes with the use of supplementary aids and services cannot

be achieved satisfactorily. 20 U. S. C. § 1412(a)(5). Consideration is given to the two-part test and the factors to be considered in *Daniel R. R.*

Factor No. 1. The steps taken by a school to accommodate the disabled child in general education: Through the years, the District took incremental steps in reducing the Student's general education program. Incremental steps may include creating a program that involves both mainstream and special education courses. *Daniel R.R.* at 1050.

The District has provided a litany of modifications and accommodations for the Student: 1:1 instructional aide, visual schedule, visual picture cues/prompts along with short verbal directions; use of proximity at the Student's level, opportunities for sensory breaks, ignoring selected behaviors, incorporation of a reinforcer into an instructional task when possible, among others. Student's assignments were reduced and special projects were used in lieu of assignments. Instruction was altered by providing specialized curriculum, short instructions, visual aids, extra time for oral and written responses, frequent feedback, pairing with a peer, sitting near the teacher and encouragement for classroom participation.

Many behavior management accommodations were made including positive reinforcement, seat near the teacher, supervision during transition activities, following the BIP, and small group instruction. The Student received OT, speech therapy, psychological services adapted PE, and AT services. Parent and in-home training was provided. The District satisfied Factor No. 1.

Factor No. 2. The extent to which the student receives an educational benefit from general education: Both the writing teacher and the Student's general education teacher testified to the gap between the Student's cognitive ability and the general education curriculum. The general education teacher modified the \*\*\* grade curriculum to fit the Student's IEP goals and objectives, but testified that it was almost unrecognizable. The writing teacher testified that \*\*\* grade writing focuses on composition. The curriculum was modified for the Student by using pictures from home to choose an adventure that student had had from those pictures. With teacher assistance, the Student prepared an outline of student's paper, and wrote a paragraph using teacher-generated sentences. The writing teacher testified that the Student is very overwhelmed in writing class and avoids student's tasks by roaming around the room, yelling "no" and refusing to do student's assignment. Student has not demonstrated an ability to generate a sentence on student's own.

As an example of the Student's performance in social studies, the testimony revealed that the general education class studied the cause and effect of the Texas Revolution and the people involved in it. For the Student, the teacher had student select one person involved in the revolution, and using leveled text, tried to help student to understand who that person was. However, the evidence supports that the Student was unable to grasp how events occurred or why they took place. Student was unable to express an understanding of the lesson either orally, in writing, or with student's \*\*\*.

The testimony reflects that math is a difficult subject for the Student. Student needs to manipulate solid objects. Midway through the \*\*\* grade, the general education teacher saw that the Student was not demonstrating

mastery in that subject. The \*\*\* teacher testified that she and the general education teacher believed that the Student could be more successful in math if it was provided in the \*\*\* classroom.

For the Student to experience academic success, student's efforts at task avoidance must be reduced, and student's rate of compliance must increase. The outside behavior consultant testified that the Student exhibited a greater level of compliance with strategies when they were implemented in the special education room where there are few students. Her testimony supports the District position that the Student has a better chance for success if student receives more instruction time in the special education setting where student exhibits a higher rate of compliance. Dr. \*\*\* also recognized the need for the Student to be educated in a less stimulating environment when she recommended that the Student interact with single or small groups of classmates rather than contending with the class as a whole.

Consideration must be given to non-academic benefits that a child derives from general education as well as academic benefits. *Daniel R.R.*, 874 F.2d at 1049. A student may derive non-academic benefit from interacting with his peers in general education classes. Although the Student was in general education for language arts, social studies, writing and math classes, for the most part, student was taught separately by the teachers or instructional assistants, and followed an entirely modified curriculum. Student's general engagement and awareness of class projects appeared to be minimal during a science class project that the District videotaped.

Inclusion in a general education provides a child with disabilities with an opportunity to observe appropriate behaviors from general education peers, and to learn to model that behavior. The Petitioner's expert opined that the Student was not learning to model behavior from student's general education peers. There is abundant evidence of the Student's behaviors in the general education room. They ranged from wandering around the room, \*\*\*, getting up and circling through the room, and \*\*\*. Thus, the Student's opportunity to interact with student's general education peers was seriously limited. The general education teacher testified that the Student's peers acted more like caregivers, using some of the strategies that they'd seen the teachers use with the Student. Based on the evidence, the Student did not derive significant nonacademic benefit from student's placement in math, language arts and social studies general education setting. However, because student was better able to participate and succeed in science and small reading groups, and in order to continue to provide student an opportunity to be with general education peers, the District's recommendation includes continuation in the general education setting for those subjects.

The 5<sup>th</sup> Circuit recently considered LRE for a child with severe intellectual disabilities and speech impairment. There was a large gap between the child's objectives and the general education curriculum, and he was unable to grasp the concepts in science and social studies. The court found that the child's assignments had to be 100% modified. The Court determined that the child was not receiving an educational benefit in these two general education subjects. *J. H. v. Fort Bend Indep. School Dist. No. 11-20718* (5th Cir. July 26, 2012). The evidence in the case at bar supports a like finding.

Factor No. 3. The effect the disabled student has on the general education population. In the general education setting, the Student walked around the room \*\*\*, and on occasion hit another student. When student

became too disruptive, the general education teacher evacuated the room and attempted to continue teaching the rest of the students in the hallway. She evacuated the room approximately 10 times due to the Student's behaviors. Each evacuation resulted in lost instruction time of 10 minutes up to 30 minutes. Other parents requested that their student be removed from the class due to the Student's behaviors. The Petitioner's behavior analyst observed the Student while in writing class and witnessed the difficulty the writing teacher experience in teaching her class due to the Student's behaviors. The evidence supports a finding that the Student's behaviors in the general education had a significant effect on the general education peers.

Consideration is given to the two-part test of *Daniel R. R.*: 1) Can education in the regular classroom, with the use of supplemental aids and services, be achieved satisfactorily, and 2) Has the school mainstreamed the child to the maximum extent appropriate? The record shows that although the Student has been included in general education since Kindergarten, student has required an increase in special education time through the years. It is clear that, at this juncture in student's school career, the Student's education cannot be achieved satisfactorily in all subject areas in the regular classroom. Because the evidence supports that student is better suited for the "hands-on" nature of science instruction, and because student does better in small group instruction, education in the general education setting in science and reading group can be achieved satisfactorily.

Recognizing the Parent's sincere belief that the Student should be in a general education setting, attention is paid also to the Parent's desire for the Student to receive a better education. The Parent acknowledges that FAPE provides a basic floor of opportunity, but, quite naturally, she believes that her \*\*\* deserves more. The evidence is that the District believes the Student can make more progress and be more successful in language arts, social studies, and math in the small, structured environment of the \*\*\* room. Considering the minimal educational benefit that the Student receives during language arts, social studies, and math in general education, and the effect on the general education population, the District's February, 2012 placement proposal for the Student would mainstream student to the maximum extent appropriate. The District's proposed placement is appropriate.

#### **Conclusions of Law**

1. Student is a student in the Leander Independent School District eligible for special education and related services under the IDEA. The Leander Independent School District is the local education agency responsible for providing those services to student. 20 U.S.C. § 1400 *et seq.* and its implementing regulations.
2. Leander Independent School District's educational program is entitled to a legal presumption of appropriateness. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984). The Petitioner has the burden of proving that student's special education program was not appropriate, or that the District did not comply with the procedural requirements of the IDEA and denied student a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005). Petitioner failed to meet petitioner's burden of proof.
3. The Leander Independent School District did not deny the Student a FAPE. 34 C.F.R. §300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
4. The February, 2012 proposed placement for the Petitioner is in the least restrictive environment. *Daniel*

*R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989); . *J. H. v. Fort Bend Indep. School Dist.* No. 11-20718 (5th Cir. July 26, 2012).

**Order**

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all relief requested by Petitioner is DENIED.

SIGNED on August 20, 2012.

\_\_\_\_\_/s/\_\_\_\_\_

BRENDA RUDD  
Special Education Hearing Officer  
For the State of Texas

**NOTICE TO THE PARTIES**

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, 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 A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §1415(i)(2).

STUDENT § BEFORE A SPECIAL EDUCATION  
b/n/f PARENTS §  
§  
V. § HEARING OFFICER FOR THE  
§  
LEANDER INDEPENDENT §  
SCHOOL DISTRICT § STATE OF TEXAS

**SYNOPSIS**

**Issue:** Whether the Respondent removed the Petitioner from petitioner’s least restrictive environment contrary to petitioner’s current schedule of services

**Held:** For the Respondent District

**Citation:** 34 C.F.R. §300.114; *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989); *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide appropriate educational services, including academic, behavioral, and social needs to meet the Petitioner’s individualized needs

**Held:** For the Respondent District

**Citation:** 34 C.F.R. § 300.101; §300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to ensure that all goals and objectives in the Petitioner’s individualized education program (“IEP”) are appropriate, measurable and individualized to meet the Petitioner’s needs

**Held:** For the Respondent District

**Citation:** 34 C.F.R. § 300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to properly implement goals and objectives in Petitioner’s IEP

**Held:** For the Respondent District; *de minimis* violation

**Citation:** 34 C.F.R. § 300.101; §300.324; § 300.513; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide an IEP with goals and objectives for “flex time”

**Held:** For the Respondent District

**Citation:** 34 C.F.R. §300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide IEP progress reports pursuant to the March 9, 2011 IEP

**Held:** For the Respondent District

**Citation:** 34 C.F.R. § 300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to assess ongoing academic and behavioral needs so that learning strategies, behavioral interventions, accommodations and modifications, and goals and objectives could be reviewed and revised as necessary to promote progress

**Held:** For the Respondent District

**Citation:** 34 C.F.R. § 300.324(b); *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide current present levels of academic functioning  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to modify and accommodate the general education lesson plans according to Petitioner's IEP  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to implement Petitioner's behavior intervention plan  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to implement an appropriate BIP including specific, measurable goals and objectives, individualized to meet Petitioner's needs  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to implement recommendations made by the outside behavior specialist  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to implement positive behavioral strategies according to Petitioner's BIP  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. §300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide appropriately trained educational support in the proposed placement, including teachers and related providers trained in inclusion, behavior, and Petitioner's IEPs and disabilities  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. §300.156; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide in-home and parent training  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. §300.34; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

**Issue:** Whether the Respondent failed to provide appropriate transition services to address potential problems when transitioning to a new campus in August, 2011  
**Held:** For the Respondent District  
**Citation:** § 300.320; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

- Issue:** Whether the Respondent failed to provide the Parent with ongoing educational information, data, progress monitoring and access to key implementers of Petitioner’s IEP so that the Parent could participate collaboratively in supporting Petitioner’s educational program in a meaningful and informed manner
- Held:** For the Respondent  
**Citation:** 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent failed to provide a collaborative atmosphere at Petitioner’s ARD meetings  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent interfered with parental participation with primary implementers of the Student’s education by requiring communication through the communication liaison  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent interfered with and attempted to stifle the Parent’s participation at ARD meetings by requiring the District’s attorney to attend Petitioner’s ARD meeting  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.501; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent failed to revise Petitioner’s IEP following the March 30, 2012 progress reports when the District determined that Petitioner would not master petitioner’s annual goals  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent failed to follow Petitioner’s entire schedule of services  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.101; 300.324; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent failed to follow the District’s procedures and practices  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff’d*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue:** Whether the Respondent provided a FAPE for the Petitioner  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.101
- Issue:** Whether the Respondent’s proposed placement of the Petitioner is the least restrictive environment  
**Held:** For the Respondent District  
**Citation:** 34 C.F.R. § 300.114