

DOCKET NO. 332-SE-0816

STUDENT, B/N/F
PARENT AND PARENT,
Petitioner

v.

TOMBALL INDEPENDENT SCHOOL
DISTRICT,
Respondent

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner, STUDENT

hearing. In addition, Petitioner requested an open hearing and that a stay put be enforced to ensure Student remained in Student's current educational placement, and Petitioner's requests were granted. The hearing was continued and rescheduled for October 17, 2016.

The hearing convened on October 17, 2016, at the District's Staff Development Center located at 1302 Keefer Street, Room 705, Tomball, Texas. Petitioner was represented by Shiloh Carter of Disability Rights Texas and John Keville of Winston & Strawn, LLP. The District was represented by Amy Tucker of Rogers, Morris & Grover.

1. The District to provide an appropriate educational placement for Student for the 2016-2017 school year in the LRE for all core academic subjects, including *** and ***. The District to provide the following services identified as areas of need during the May ***, 2016 IEE for speech and language:
 - a. Speech services that address ***, ***, ***;
 - b. A communication device that is ***;
 - c. Speech services that include the opportunity for ~~class~~ observation and therapeutic intervention, as well as additional staff training on cues and prompts utilized by Student to enhance verbal output; and
 - d.

3. Student's Annual ARD and Reevaluation Review was conducted by the District on December ***, 2015.
4. On August ***, 2013, Student was *** in the District's ****(*) *** **.
5. During the 2015-2016 school year Student attended *** at *** in Tomball ISD. The following table reflects Student's schedule of services during the **2016** school year

6. On November ***, 2015, during Student's *** year, an ARD meeting was convened to conduct a Review of Existing Evaluation Data (REED). Additional evaluation in the areas of speech/language, updated vision and hearing screening, occupational therapy, updated parent/teacher information, formal cognitive testing, adaptive behavior measures, formal/informal achievement data and assistive technology was requested.
7. The District's Reevaluation Review was completed on December 2015.⁶
8. On

15. When their first choice evaluator was not able to complete the assessments, Parents selected Dr. *** for the Psychoeducational IEE. Dr. ***'s IEE is dated August ***, 2016.

IV. DISPUTED FINDINGS OF FACT

Proposed placement for the 2016-2017 school year and whether the placement is in the LRE?

1. The central issue in this case is whether the District violated the IDEA's LRE mandate by proposing to reduce Student's general education time by moving Student's *** and *** courses (*** minutes each) from the general education classroom to the special education classroom.
2. At the beginning of Student's *** year, Parents requested a due process hearing to challenge the District's recommendation that Student receive *** hours/day of Student's *** and *** instruction in the special education classroom.¹⁵ They also alleged they were denied the right to meaningfully participate in the development of Student's IEP. Parents sought, among other relief, placement in the general education *** classroom for the entirety of Student's school day.¹⁶
3. The 2015-2016 Decision was not appealed and is final.
4. The hearing officer in the 2015-2016 Decision held that Student's cognitive levels prevent Student from following along with the instruction in the general education classroom. The hearing officer also concluded that the proposed placement with a combination of general education and special education instruction is the placement that is most beneficial for Student's progress.¹⁷
5. The hearing officer in the 2015-2016 Decision held that the schedule of services outlined in Stipulated Finding of Fact No. 5 was the appropriate LRE placement.
6. After the 2015 due process hearing, the District conducted Student's Reevaluation. On the assessment of intelligence and cognitive abilities, Student received a Full Scale IQ

¹⁵ See Hearing Officer's Decision, TEA Dkt. No. 332-SE-7015 (SEA Tex. Oct. 29, 2015) (hereinafter "Decision") at 1-2.

¹⁶ Id. at 2.

¹⁷ Id. at 4344.

Standard Score of ***⁸. The corresponding percentile rank of *** means that *** of people demonstrate a higher cognitive ability than the student.¹⁹

7. With respect to adaptive behavior, the 2015 Reevaluation Committee determined that Student demonstrated deficits in the areas of fine motor skills, communication, *** (including *** and ***), functional academic skills and home and community orientation.²⁰
8. Considering Student's level of intellectual functioning and concurrent deficits in adaptive behavior, the Reevaluation Committee concluded Student qualified as a student with an Intellectual Disability.²¹ The evaluation of Student's language confirmed eligibility as a student with a Speech Impairment with deficits in expressive and receptive language skills and articulation.²² Student's academic achievement in ***, reading and writing was commensurate with Student's intellectual functioning.²³
9. The ARDC convened on December **2015, to consider the Reevaluation and to develop Student's IEP for the remainder of the 2015-2016 school year and the first half of the 2016-2017 school year. The different portions of the Reevaluation were reviewed by the multi-disciplinary team. Based on the results, it was recommended to change Student's eligibility to Intellectual Disability (ID) and Speech Impairment (SI).²⁴
10. The ARDC then reviewed Student's progress on Student's other goals/objectives, as well as the new proposed goals/objectives. Extensive discussion occurred around the new proposed goals/objectives and several were changed based on parental input. Parents' request for goals related to ** and ***, the special education teacher, ***, agreed to draft goals for consideration at a reconvened ARDC. The Committee also agreed with Parents' request to develop a goal related to "****". Lastly, ***, speech

12.

- for most of *** (***), and *** instruction in the special education classroom.³³ However, *** minutes/day of *** and *** minutes/day of *** would continue to be implemented in the regular education classroom along with all remaining instructional time including instruction in *** and ***. Student would have in-class support (support provided by a special education paraprofessional) during all regular education instructional time.³⁴ Lastly, school staff continued to recommend that Student be included with Student's nondisabled peers in all non-academic and extracurricular activities such as lunch, *** and field trips.³⁵
16. In response to school staff's proposed placement, Parents recommended an additional *** minutes of general education time for the remainder of the 2016 school year and an additional *** hours of general education time for the 2017 school year.³⁶ The District disagreed with Parents proposed schedule based on Student's present level of performance.³⁷ Parents noted their disagreement with the District's Reevaluation and the schedule of services. Based on the disagreement, Parents were offered and accepted a reconvene ARDC meeting to further consider the areas of disagreement.³⁸
17. On January ***, 2016, the ARDC reconvened. Additional discussion occurred regarding Student's PLAAFPs, the LRE and data collection.³⁹ Parents' disagreement with the Reevaluation, the schedule of services and the PLAAFPs documented in the non-consensus ARD paperwork.⁴⁰
18. The current complaint was filed on August 19, 2016. Shortly before the hearing was filed, the family's second IEE was completed by Dr. *** on August ***, 2016.⁴¹ Dr. *** noted the family's belief that placing Student in a special education classroom with other children who display similar academic, cognitive, language and social delays is detrimental to Student's progress.⁴² Consistent with the District's evaluation, Dr. *** concluded Student's Full Scale IQ was a * and fell in the *** percentile.⁴³ Student's academic achievement scores were in the "very low" range, all falling below a ***

³³ JE-2 at 2526; Tr. at p583.

³⁴ JE-2 at 26.

³⁵ JE-2 at 24.

³⁶ JE-2 at 47.

³⁷ Id.

³⁸ JE-2 at 33.

³⁹ Id.

⁴⁰ JE-2 at 43.

⁴¹ JE-7 at 1.

⁴² Id.

⁴³ JE-7 at 3.

equivalent. Dr. *** explained that Student's "overall academic skills appear to be rather rudimentary and more in keeping with those of a *** rather than a ***."

19. The District members of the ARDC included very experienced teachers and a speech pathologist that know Student very well and have worked with Student during both Student's *** and *** school years. ***, Student's *** teacher for the current school year, has 11 years of experience in education with 6 of those as a teacher.⁴⁵ Ms. *** , Student's special education teacher for *** , has 17 years of experience as a special education teacher.⁴⁶ *** , a certified special education teacher and speech language pathologist, is the Program Specialist for Low Incidence Population and has 17 years of experience in education.⁴⁷ Ms. *** has attended ARD meetings for Student since the 2014-2015 school year.⁴⁸ She has spent approximately 40 hours observing Student specifically, but also spent numerous additional hours in ***'s special education classroom for a variety of other reasons.⁴⁹
20. The District has made sufficient effort to accommodate Student in regular education. In fact, despite the significant impact of Student's disability on Student's ability to obtain an educational benefit from regular education, the ARDC did not propose to remove Student from all general education academics. Instead, the ARDC recommended a modified curriculum with paraprofessional support and accommodations to be implemented in the regular education environment for some of the *** and *** instruction.⁵⁰
21. Student's *** curriculum, like Student's *** and *** guidelines from the last 2 years, must be modified 100% in order for Student to access the general education curriculum. Student is not held responsible for any of the regular education curriculum being studied by the regular education students.⁵¹

- instruction at Student's level and at Student's pace with increased repetition and small group instruction in order to make progress.⁵²
22. At present levels of performance, Student does not receive an educational benefit from core academic subjects being taught in the general education classroom. Student's ID prevents Student's from being able to grasp the essential elements of the regular education curriculum. Student's IEP goals represent "the prerequisite skills" of the *** curriculum – not the *** curriculum itself.⁵³ Prerequisite skills represent the below gradelevel foundational skills a child needs before he or she can extend that knowledge to grade level curriculum.⁵⁴
23. The incremental change in the proposed schedule, to remove Student from the regular education*** and *** instruction, was a result of the increased difficulty level of the curriculum from *** to ***. As Student's *** teacher,***, explained, Student's classes were taught in a more "****" manner that permitted Student to receive educational benefits.⁵⁵ However, in the ***, the curriculum ***.⁵⁶ In order for the curriculum to be meaningful to Student, Student needs the information introduced at a lower level, at a slower pace, and with significantly increased repetition.⁵⁷
24. Student is unable to grasp any of the actual*** curriculum and instead requires 100% of it to be modified. The modified activities are not recognizable as curriculum.⁵⁸ The nature and severity of Student's disability simply does not permit Student's to make meaningful educational progress without the combination of special education and regular education instruction recommended by the ARD. Without access to the modified curriculum in the special education classroom, Student will be denied meaningful access to the *** curriculum as mandated by the IDEA.
25. Student appears lost during the general education academic instruction and is more concerned about ***self than Student is with what Student's teachers or Student's nondisabled peers are doing.⁵⁹

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less than 1 minute on a single day during the school year. In fact, the "instruction" on the goal consists of a simple review during a teaching activity.⁶⁷

working with ***. Based on Student's success with the ***, by March 2016, Ms. *** was looking for a communication device to extend the progress Student was making with ***.⁹⁰

41. The ARDC reviewed the AT evaluation and recommended: (1) a *** to permit Student to let others know when Student needed help; and (2) ***. The introduction of *** in March 2016 was an extension of the progress Student was making with the recommendations made by the ARDC.⁹¹

Did the District predetermine Student's educational placement for the 2016-2017 school year without meaningful parental input?

42. The District held several ARD meetings over numerous hours in an attempt to reach consensus on all issues. Parents' input and recommendations are documented in numerous parts of the ARD document.⁹² Another ARD meeting, another 5 hours of collaboration, occurred on May ***, 2016.⁹³
43. There was no bad faith exclusion, or any exclusion for that matter, on the part of Parents or refusal to listen to or consider their input.
44. Since the 2015 due process hearing, the Principal directed that all communication with Parents must have prior approval of the Principal.⁹⁴
45. On March ***, 2015, Mother requested to observe Student in *** class and volunteered to help in the classroom after Student's ** teacher was allegedly unable to share any details about Student's participation or progress in class. Seven months later, on April ***, 2016, Mother was allowed to observe Student's *** class.⁹⁵

V. APPLICABLE LAW

A. Statutory Overview and FAPE

⁹⁰ RE-2 at 59 (Ms. *** describing Student's progress with ***).

⁹¹ Tr. at 413.

⁹² Tr. at 59192 (explaining none of the meetings during the 2015-16 school year lasted less than 5 hours; minimum of 15 hours of face-to-face collaboration).

⁹³ See e.g. JE-2 at 2, 3233, 36.

⁹⁴ JE-1.

⁹⁵ PEs20-25; RE-2 at 72; Tr. at 84, 279, 315, 499, 526, and 562.

⁹⁶ PE-23; Tr. at 9, 57.

- x To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.¹⁰⁵

In evaluating the provision of FAPE, the Hearing Officer must determine whether the educational plan developed through the IDEA's procedures was reasonably calculated to enable the child to receive meaningful educational benefits.¹⁰⁶ In determining whether the District has provided the requisite "basic floor of opportunity," the Fifth Circuit utilizes a four part test: (1) is the program individualized on the basis of the student's assessed performance; (2) is the program administered in the LRE; (3) are the services provided in a coordinated and collaborative manner by the key "stakeholders;" and (4) are positive academic and academic benefits demonstrated.¹⁰⁷

B. 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

Board of Education, 42 IDELR 1096 (4th Cir. 2004), cert. denied, 546 U.S. 936 (2005), when parents requested that the district fund an Applied Behavior Analysis (ABA) program, the IEP team refused and indicated its policy prevented it from considering a program other than the one in which it had invested. During IEP meetings, the district allowed the parents to voice their opinion and present evidence regarding an appropriate program for their son, but it already had decided on his placement and educational methodology.

If a school district predetermines a disabled student's placement and excludes the parents from participating in the decision making process, it has committed a procedural error. When the evidence presented at hearing shows that parents were meaningfully engaged in the IEP formation process, such evidence will go far to defeat a claim of predetermination and may render a procedural violation harmless. However, the mere presence and opportunity of a parent to speak at ARDC IEP meetings does not, standing alone, equate to an adequate opportunity to participate. Participation must be more than a mere form; it must be meaningful. Procedural violations of this type are actionable only if they impede the parent's participation in the IEP process or result in educational harm.¹⁷

District personnel are permitted to preplan, create a draft IEP, and discuss the "way ahead" prior to an ARDC meeting. The difference between "preparation" and "predetermination" is such conduct is only considered harmless as long as school officials are "willing to listen to parents" and "come to the meeting with suggestions and an open mind, not a requisite course of action."¹⁸

¹¹⁶ W.G., 960 F.2d at 1485; see also N.L. v. Knox County Schools, 315 F.3d 688 (6th Cir. 2003) (stating that school officials must be willing to listen to the parents and must have open minds).

¹¹⁷ Cooper v. District of Columbia, 64 IDELR 271 (D.D.C. 2014).

¹¹⁸ Knox County Schools, 315 F.3d 688, 695 (6th Cir. 2003); R.P. v. Alamo Heights Independent School Dist., 703 F.3d 801, 811 (5th Cir. 2012) ("Under Federal regulations, not every conversation about a child at a regularly-defined meeting in which parents must participate."); 34 C.F.R. § 300.501(b)(3) ("A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.")

If shown that there was no way that anything Parents said, or any data Parents produced, could have changed the District's determination of appropriate placement, then Parents' participation was no more than after the fact involvement.

If Petitioner meets their burden of showing Parents were precluded from meaningfully participating in the ARDC meetings and IEP development because the District had predetermined placement and/or services, then the District will have committed a procedural violation of the IDEA. Again, a procedural violation can only cause substantive harm when it seriously infringes upon Parents' opportunity to participate in the IEP process¹¹⁹ or results in the loss of an educational opportunity.

"The mere fact that the IEP may not have incorporated every request from the parents does not render the parents 'passive observers'¹²⁰ or evidence any predetermination."

VI. DISCUSSION

- A. Did the District fail to ensure, to the maximum extent possible, that Student received educational instruction and services in the LRE?

The record is abundantly clear that Student is engaging, outgoing, friendly, and

provide that in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of the services that he or she needs, and that a child is not to be removed from education in afn in5

- b. the IDEA does not require regular education instructors to devote all or most of their time to one child;
- c. mainstreaming is pointless if instructors are forced to modify the regular education curriculum to the extent the handicapped child is not required to learn any of the skills. Educators are not required to change the curriculum beyond recognition or operate a "classroom within a class." When 90-100 percent of

disability on Student's ability to obtain an educational benefit from regular education. The ARDC did not propose to remove Student from all academics. Instead, the ARDC recommended a modified curriculum with paraprofessional support and accommodations implemented in the regular education environment for some of the and *** instruction.¹³⁴ The regular education and special education teachers collaborate often.¹³⁵ Ms. *** the special education teacher, has trained the paraprofessionals on how to modify activities in the general education class for Student and how to implement Student's accommodations.¹³⁶

The weight of the evidence proved that *** curriculum must be modified 100% in order for Student to access the curriculum. Student is not held responsible for any of the regular education curriculum being studied by the regular education students.¹³⁷ Additionally, because of Student's educational needs, Student will not master Student's goals, much less any of the rest of the curriculum, with only occasional opportunities in the regular education classroom to work on Student's goals. All of the experienced, educational professionals who have worked with Student agree that Student requires specialized instruction at Student's level and at Student's pace with increased repetition and small group instruction in order to make progress.¹³⁸ Ms. *** can provide Student with meaningful access to the entire *** curriculum as required by the

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“the prerequisite skills” of the ***curriculum– not the *** curriculum itself.¹⁴⁰ Prerequisite skills represent the below grade level foundational skills a child needs before they can extend that knowledge to grade level curriculum.¹⁴¹ The incremental change in the proposed schedule, to remove Student from the regular education** and *** instruction, was a result of the increased difficulty level of the curriculum from ** to ***. Student’s *** classes were taught in a more “***” manner that permitted Student to receive educational benefits.¹⁴² However, in ***, the curriculum ***.¹⁴³ In order for the curriculum to be meaningful to Student, Student needs it introduced at a lower level, at a slower pace, and with significantly increased repetition.¹⁴⁴

Because of Student’s cognitive limitations, Student is unable to grasp any of the actual *** curriculum and instead requires 100% of it to be modified. The modified activities are not recognizable as *** curriculum.¹⁴⁵ The nature and severity of Student’s disability simply do not permit Student to make meaningful educational progress without the combination of special education and regular education instruction recommended by the ARD Committee. Without access to the modified curriculum in the special education classroom, Student is denied meaningful access to the *** curriculum as mandated by the IDEA.

Factor 3 – Overall Education Experience: Examining Student’s overall educational experience in the mainstream environment, there is no evidence that indicates Student receiving educational benefits that would tip the balance in favor of additional mainstreaming time. In fact, Student appears lost during the general education academic instruction and is more concerned about ***self than Student is with what Student’s teachers of Student’s nondisabled

¹⁴⁰ See e.g. Tr. at 524-25.

¹⁴¹ Tr. at 584.

¹⁴² Tr. at 477.

¹⁴³ Tr. at 295, 583.

¹⁴⁴ Tr. at 482, 520, and 583.

¹⁴⁵ Tr. at 565.

peers are doing.¹⁴⁶ Student's low communication skills interfere with Student's access in the regular education environment.

Contrary to the general education setting, Student is much more engaged and outgoing – Student is “excited,” “eager,” “comes alive,” “lights up” and “confident”—in the special

special education time will assist Student with making progress in Student's communication skills and academic skills, which will make Student's time with Student's nondisabled peers more meaningful.⁵⁴ Balancing the benefits of general and special education reveals that the ability of the special education setting to meet Student's needs far outweighs any limited unidentified benefit Student might or might not receive from additional inclusion time, including any increased opportunity to observe behavior and communication modeling by nondisabled peers

Petitioners argue that Student should have increased time in the regular education because it is feasible for Student's IEP goals to be implemented in that environment. In this regard, it is significant that in developing the LRE test, the Fifth Circuit in *Daniel R.R.* specifically rejected the test being employed by the Sixth Circuit and affirmed in *Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983).⁵⁵ The test employed in the Sixth Circuit was whether the services that make a segregated

disabled student. The student should be able to derive some actual educational benefit from his placement.¹⁶

Although it may be feasible with sufficient resources to implement Student's IEP goals in the general education classroom utilizing inclusion strategies to provide Student with the opportunity to generalize or reinforce certain skills in the regular education class, it is not

progress and good grades, like the *** and *** grades, are based on Student's progress on Student's IEP goals and the modified curriculum taught by Ms. *** in the special education class.¹⁶⁰ The Fifth Circuit rejected the same argument in Brillon

“... the fact that Ethan met ~~shown~~ IEP goals, and received at one point high grades under a standard for special education students or his individualized IEP, does not undermine the hearing officer's fact finding, amply supported by Ethan's teachers, that (1) the 'IEP goals represented a small part of the curriculum the other students were expected to master,' (2) Ethan was struggling by the end of the ***, (3) Ethan met his *** IEP goals only because 'the instruction he received in the general education class was repeated in the special education class,' and (4) Ethan's teachers found that his disabilities profoundly impacted his involvement and progress in the general curriculum.¹⁶¹”

Petitioners' argument also overlooks the fact that the IEP goals are not the only thing the District is required to teach Student. In m nric

instruction in a corner of the regular education classroom to provide a "classroom within a classroom".¹⁶³ That is not required by the IDEA.

Factor 4 – Effect on Regular Classroom: Student's presence has a detrimental effect on the regular classroom environment due the presence of an additional staff member and the efforts required to educate Student in that environment. While Student is not a behavior problem, Student requires fulltime assistance during academic activities, whether that is the attention of the teacher or a paraprofessional.¹⁶⁴ Despite Student's intensive needs in the regular education environment, the District has provided the requisite supplementary aids and services necessary to meet Student's needs in that environment for a significant portion of the school day. However, special education instructional time is critical to Student's progress and to Student's ability to have meaningful access to the core academic curriculum.

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unable to receive a meaningful educational benefit from the ~~grade~~ instruction being provided in the classroom.¹⁶⁶ Understanding the importance of the language and behavioral role models that nondisabled peers provide to Student, the ARDC has continued to recommend Student be included with Student's nondisabled peers for a portion of ***, and ***, all instruction in ***, ***, and ***, and all ancillary activities like *** and lunch.¹⁶⁷

Based on a preponderance of the evidence and application of the Fifth Circuit's Daniel R. R. LRE test, Petitioners failed to meet their burden of showing that the proposed placement was not in the LRE. The evidence showed that Student has been mainstreamed to the maximum extent appropriate. The IEP proposed for the ~~2016~~ school year is the LRE.

Collaboration with Key Stakeholders:

Despite testimony introduced at hearing that since the 2015 due process hearing the Principal directed that all communication with Parents must have prior approval of the Principal, the evidence does not support finding that the rigid communication protocol impeded Parents' meaningful participation in ARDC meetings. Such rigid control of communication with Parents is counter to the IDEA's statutory collaboration mandate and can be indicative of an adversarial position taken by the District during the IEP process, a process which allegedly precluded Parents from having free access to District personnel during the development and implementation of Student's IEP. Having carefully reviewed this issue, the Hearing Officer finds that the weight of the evidence strongly supports that Parents fully participated in the IEP process, they were listened to, and many of their suggestions/requests were eventually incorporated into the IEP that has been substantially complied with.¹⁶⁸

B. Did the District fail to provide Student with appropriate supplemental aids and services recommended in the IEP performed on May ***, 2016?

¹⁶⁶ Tr. at 583 (Ms. *** explaining the importance of providing Student with instruction at Student's level to ensure Student can make meaningful progress in the curriculum).

¹⁶⁷ Tr. at 58889 (Ms. *** explaining the benefits of Student's inclusion with regular education students).

¹⁶⁸ Michael F, 118 F.3d at 253.

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recommendations of experts that might result in better or more progress¹⁸⁴. The IEP as written provides Student with appropriate supplemental aids and services even if it is not the exact aids and services recommended by outside expert

- C. Did the District predetermine Student's educational placement for the 2016~~2017~~ school year without meaningful parental input?

Petitioners allege that the District refused to collaborate with them on the LRE determination. Under the IDEA, parents have a procedural right to participate in IEP meetings.¹⁸⁵ The District held several ARDC meetings over numerous hours in an attempt to reach consensus on all issues.¹⁸⁶ Parents' input and recommendations are documented in numerous parts of the ARD document.¹⁸⁷ Another ARD meeting, so another 5 hours of collaboration, occurred on May ***, 2016.¹⁸⁸ While the District did make extensive changes to the IEP at Parents' request, e.g., to the IEP goals, its ultimate decision not to agree to more inclusion time does not indicate a lack of collaboration, just a disagreement over the appropriate educational placement for Student.¹⁸⁹ "Absent any evidence of bad faith exclusion of the parents or refusal to listen to or consider the [parents'] input, [the district] met IDEA requirements with respect to parental input."¹⁹⁰ The preponderance of the evidence does not support a finding that the District predetermined Student's placement for the 2016~~2017~~-school year or that the District excluded Parents from the IEP development process.

¹⁸⁴ Rowley

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

NOTICE TO THE PARTIES

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision 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.
