

89NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PROCEEDING BEFORE THE DUE PROCESS HEARING OFFICER

[REDACTED], on behalf of
E.E., a minor,

Petitioner

v.

ALBUQUERQUE PUBLIC SCHOOLS,

Respondent

DPH #1920-02

DECISION

Muriel McClelland
Due Process Hearing Officer

November 15, 2019

Attorney for Petitioner:

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STATEMENT OF PROCEDURE

Parent's Request for Due Process Hearing was filed on July 31, 2019. *[DPHO Exh 1]* The Letter of Appointment of DPHO was issued August 1, 2019. *[DPHO Exh 2]* Attorney for Respondent filed her Entry of Appearance and Answer to the complaint on August 6, 2019 *[DPHO Exhs 3, 4]* A Pre-Hearing telephone conference was held on August 6, 2019 and a Pre-Hearing Order was entered on August 7, 2019 *[DPHO Exh 5]* The parties requested mediation on August 13, 2019, however, mediation was not successful. *[DPHO Exh 6]* Statements of Issues were timely filed on September 16, 2019 *[DPHO Exhs 7, 8]* Witness Lists and Exhibit Lists were exchanged on September 23, 2019 *[DPHO Exhs 8, 9, 10, 11]* An Amended Entry of Appearance was entered September 26, 2019. *[DPHO 12]*

The Due Process Hearing took place September 30, October 1-2, 2019. Requested Findings of Fact, Conclusions of Law and Arguments were submitted on September 28, 2019. *[DPHO Exhs 13, 14, 15, 16, 17]* This Decision was entered on November 15, 2019.

STATEMENTS OF ISSUES

Petitioner's' Statement of Issues:

1. Whether the LEA failed to provide Student necessary specialized instruction consistent with evidence-based practices for students with autism during the 2017-2018, 2018-2019, 2019-2020 school years (hereinafter "both school years") and continuing;
2. Whether the LEA failed to provide Student with education in her LRE

during both school years and continuing;

3. Whether the LEA failed to provide Student with specialized instruction in reading and reading goals which met her individualized needs during both school years and continuing.

4. Whether the LEA provided inadequate speech language therapy to meet Student's unique needs during both school years and continuing;

5. Whether the LEA's failure to reevaluate Student's speech and language needs was unreasonable in light of Student's needs and educational history;

6. Whether the LEA failed to provide education which is consistent with state standards by failing to have the IEP team discuss and document the 11 Considerations for Autism during both years and continuing;

7. Whether the LEA unilaterally determined Student's placement based on its administrative convenience rather than to meet Student's individual needs;

8. Whether the LEA failed to have person(s) at Student's IEP meetings during both school years and continuing who could interpret the instructional implications of her evaluation information and impact(s) of autism;

9. Whether District failed to address Student's difficulties on the playground including the bullying she experienced during both school years and continuing;

10. Whether District failed to implement its IEPs for Student during both school years and continuing;

11. Whether District failed to accommodate Student's health needs during both school years and continuing;

12. Whether District failed to provide any occupational therapy to address Student's

sensory needs during the school day in both school years and continuing;

13. Whether District ignored the instructional implications of the only evaluation it had on Student (from UNM CDD) and failed to address Student's needs and skill deficits resulting from autism during both school years and continuing;

14. Whether District failed during both school years and continuing to provide necessary supplemental aids and services for staff working with Student who appear to have been unfamiliar with autism and evidence-based practices for Students with autism;

15. Whether District failed to address Student's elopement, which is a safety concern, in any way which would be effective during both school years and continuing;

16. Whether District denied Student FAPE based on any of the above actions/inactions;

17. Whether Student is entitled to equitable remedy for denial of FAPE and what remedy should be provided.

Respondent's Statement of Issues:

1. Whether the removal of the Student from school during the period of time from the spring of the 2018-2019 school to the start of the 2019-2020 school year adversely impacted the Student's progress in the school setting;

2. Whether the Student's progress in District's educational setting is the result of FAPE;

3. Whether the staff assigned to provide educational support services to the Student in both the 2017-2018 and 2018-2019 school years and continuing were able to provide appropriate educational instruction and support to allow the Student to make progress;

4. Whether the IEP program developed and implemented for Student during the applicable time period was designed to provide a robust individualized education program in the least restrictive environment;

5. Whether one-time behavioral event in which the Student was successfully redirected, is, on its face, proof of a denial of FAPE;

6. Whether the Student required any evaluation which was not provided in order to receive FAPE;

7. Whether the District did consider the required 11 elements of designing an educational for the Student at all times appropriate;

8. Whether there is any proof that the Student's educational program is for the convenience of the school/District. Whether such a claim without any proof is a violation of Rule 11 of the Rules of Civil Procedure;

9. Whether there is any evidence of alleged bullying which was not properly addressed, if it indeed occurred;

10. Whether there were any health needs District was aware of that it did not properly accommodate;

11. Whether a BCBA is necessary to develop and implement an appropriate program for a student on the autism spectrum when there are other highly trained staff in attendance at the Student's IEP and MET meetings;

12. Whether Student's absences interfered with the District's efforts to include input from BCBA staff persons in Student's program;

13. Whether the inclusion of a BCBA would have changed Student's program in any

significant manner;

14. Whether Parent has interfered with the educational program implementation for the Student and whether that interference is reason for the Student's alleged school resistance;

15. Whether there is any diagnostic data to support the allegations related to "hyperlexia."

FINDINGS OF FACT

General

1. Student is currently a 2nd grader in District's cross-categorical special education classroom. She attends regular education 2nd grade classes for science and social studies. At the time of the hearing she was 7 years, 8 months old. *I, 6, 76*

2. Student was determined to be eligible for special education in 2016. *Exhs 5, 7*

3. District no longer has autism specific classrooms or the Autism Resource Team (ART). *III, 815, 830*

4 In the 2017-2018 school year Student attended Kindergarten from late September to April, 2018. In the 2018-2019 school year, she attended school from the beginning of the school year to March 6, 2019. Parent withdrew Student from District's school on or about March 6, 2019 and reenrolled her in the beginning of the 2019-2020 school year in August, 2019. *I, 46; Exh 34*

5. Consistent with her diagnosis of autism, Student over the statutory period had struggled to adjust to new environments and change, with transitions, with functional and reciprocal communication, initiating and sustaining attention to tasks she is not interested in, engaging outside her narrow interests, with repetitive nonfunctional behaviors, with loud noises, and in large unstructured group settings. *I, 31, 36, 44, 69, 218; III, 651-654, 673*

6. Student's highest level of need in social communication and restricted, repetitive behaviors is an indication of the symptomology of the disorder. *III, 851-852*

7. Student has received 1:1 private speech/language therapy at Autism Communication Specialists since preschool; she attended a private school, DLD (Designs for Learning Differences) Sycamore, as of April, 2019 for one month. *III, 669,-671, 693-694, 697; Exh 34*

8. District has provided services through a licensed occupational therapist (OT) and a licensed speech/ language pathologist (SLP) from 2016 through the 2018-2019 school years. *Exhs 20, 21, 22, 23*

Evaluation

9. Student was diagnosed with autism by the UNM Center for Developmental Disability (UNMCDD) program when she was 3 years, 10 months old. Staff observed limited use of gestures and facial expression, inconsistent eye contact, failure to initiate interactions with other children, repetitive behaviors. The diagnostic criteria indicated that Student has autism and noted that Student would require very substantial support for deficits in social communication and for restricted, repetitive behaviors. She is considered very high functioning on the autism spectrum. *I, 136-137; III, 640-641; Exh 2*

10. The only formal S/L evaluation was performed by District in 2016 when Student was age 4. The 2019 reevaluation was "performance based" requiring no additional testing. *I, 205, 213-214; Exh 6*

11. An OT evaluation has not been done since 2016; Student "did not demonstrate age-appropriate motor planning across the board." The OT stated Student functioned well even in

a noisy classroom and did not require further OT services. *II, 410, 414*

12. The educational diagnostician determined there was no need for further testing following the REED (Review of Existing Evaluation Data) process. *III, 768-769; Exhs 6, E*

13. Student's functional communication is low. She responds off-topic and is repetitious. She requires structure, repetition, consistency and a familiar routine. *I, 69, 85, 134-137, 238-239; III, 627, 654, 851-852*

Kindergarten 2017-2018 School Year

14. Student was previously enrolled in the school's preschool; she attended Kindergarten in the 2017-2018 school year. *I, 21*

15. C.H., Student's special education Kindergarten teacher appeared telephonically. Paraprofessional (aka Educational Assistant/EA) assistance was sporadic and at times nonexistent in this school year. *I, 21-26*

16. Student made progress over time in the Kindergarten classroom in terms of focusing longer, paying attention and making "more of what was being offered to her educationally." Her behavior became more appropriate. *I, 32, 44*

17. According to this teacher Student's strengths included the fact that "she was very bright and interested in improving her skills... better at reading, better at math." She enjoyed parallel play on the playground. There was no elopement that this witness could recall. *I, 37-38*

18. C.H. attended the IEP meeting on March 21, 2018. She was familiar with the 11 Considerations for Autism at that time and used it as a reference form for Student's IEP information but did not specifically go through each item. *I, 39; Exh 11*

19. At the IEP meeting on March 21, 2018 Parent requested that Student be placed

in a social communication autism classroom (which the team interpreted to mean a Social Communication Support Level I or SCS placement), where she would receive ABA therapies, behavior modification and social interaction skills. The IEP team rejected this proposal. *II, 529-531, 568; Exh 11*

20. Parent did not believe Student's IEP goals were being met, particularly goals on social interactions. *III, 664-666*

21. The Kindergarten teacher believed that Student would have benefitted from a classroom with fewer students in order to reduce her interaction with peers. In any case, Student received educational benefit in her classroom. *I, 50*

First Grade 2018-2019 School Year

22. Student's placement in the 2018-2019 school year was in a cross-categorical class comprised of 9-12 students with various eligibilities, covering 3 grades: Kindergarten, 1st grade, 2nd grade. *Exhs 11, 12*

23. Student's first grade teacher, a critical witness, could not be contacted and did not testify. She had an "I" license, participating in the SEALIP program which would qualify her as a special education teacher. *I, 8-9, 54, 64; II, 325*

24. The Educational Assistant (EA) in this class observed Student at recess playing with 3-4 other girls and did not see any bullying. She did not observe any adverse behaviors. *I, 297-301, 310-311; II, 454*

25. According to Parent, Student's first grade teacher frequently called Parent to pick up Student because Student was upset and constipated. This teacher had frequent communication with Parent generally, as well *II, 672*

26. Early in this school year Parent expressed concerns about older boy students on the playground. The playground schedule was changed by the school administration to address Parent's concerns. *II, 493-495, 556-557, 678-679, 716-718*

27. Parent also expressed concerns to staff about Student's social skills and off-topic responses. In October, 2018 Parent requested assistance through the Student Service Center and an IEP meeting. The meeting was not scheduled because a District consult had been requested. Parent had never observed Student in the classroom or at lunch/recess. *I, 358-360, 488-491*

28. On October 23, 2018 one of the special education head teachers requested that LEA staff from the District Comprehensive Support Services (DCSSRT)¹ initiate a consult to observe, support and give ideas to the classroom teacher on how to work with Student. This process precedes an IEP meeting. *II, 501-503; Exh 29*

29. After several failed attempts in the fall semester of 2018 to observe Student in the classroom, the representative from DCSSRT came again on March 5, 2019, however, Student had already been withdrawn from school. The file was placed in pending status. *II, 359, 533, 545, 587-590, 594, 601-603*

30. Student on her own retreated to a coat closet in the classroom when she was elevated; she threatened to leave but never eloped from the classroom. *II, 499-500; III, 685-689*

31. The principal, I.R., placed Student on a one-day suspension because she had hit another student in the head with a rock. *II, 334; Exh 33*

32. Parent withdrew Student from school on or about March 6, 2019 because of her

¹ Previously known as the Intensive Support Program Team (ISP), the Autism Resource Team (ART) and the Behavior Consult Team. *II, 608-609*

concerns about safety issues, bathroom visits, social skills, communication skills in a structured setting, and improvement in her overall development. *I, 134-137, 184-186, 243*

33. An IEP meeting was held March 18, 2019 which Parent attended as a member of the IEP team. Again Parent proposed the SCS classroom specific to autism and again her proposal was rejected by the team pending the result of the requested LEA consult. *II, 115-116; II, 423-426, 444; Exhs 20, 22*

34. When the OT, B.H. worked with Student in the spring semester of the 2018-2019 school year she did not observe any sensory processing deficits. Student did not demonstrate age-appropriate motor planning across the board (grip on pencil and writing). After working with Student the OT observed improvement. *I, 116-116; II, 423-426, 444; Exhs 20, 22*

Second Grade 2019-2020 School Year

35. Student's current and sponsor teacher, A.Y. teaches a cross-categorical class for 10 students combined for 2nd and 3rd grades. The class is comprised of one student with autism.. Other students were identified as developmentally delayed, other health impaired, speech-language impairment, and specific learning disability. Pullouts were for regular ed science and social studies. *I, 57-58, 62, 76-77*

36. This teacher described Student's strengths and weaknesses in that she's open to learning, enjoys volunteering and answering questions reads very well but has difficulty with reading comprehension, retelling and retaining materials. In math she has difficulty with adding and subtracting numbers high than 50. *I, 60-61-104-105, 133*

37. This teacher stated that Student often responded off-topic. She agreed with assessments that Student is intelligent. She had not witnessed outbursts, elopement, or escalated

behaviors. There was nothing in Student's behavior in her classroom that signaled the need for a FBA. *I, 134-137, 184-186, 243*

38. Several items in Student's March 18, 2019 IEP had not yet been implemented in the fall semester of 2019-2020 school year i.e., the IEP mandated accommodation for a visual scheduler and a FBA. A behavioral goal was indicated but not included in the IEP. *I, 85, 87-90, 138-140, 158; Exh 12*

39. A.Y. was aware of the 11 Considerations for Autism but could not recall if she had any specific training in the subject. To date she has not attended an IEP meeting for Student. She presented as a very credible witness. *I, 158-159*

40. A.Y. did not see the need for a visual schedule as indicated in Student's IEP, although she is working on getting one. *I, 85, 185-186*

41. Student has met some of her IEP goals to date except that, even though she reads very well, she still has difficulty with reading comprehension and still requires assistance to make progress in math. Her problems are not in the use of expressive language. *I, 144, 175-176*

42. Her current teacher does not have an explanation for why Student can read (decoding) very well but has difficulty with understanding what she reads or the meaning of words. Student can read grade level books accurately but does not show reading comprehension of what she has read. This teacher has not received training about reading comprehension for students with autism to date. *I, 104-105*

43. During this school year Student's reading instruction consists of three segments: SPIRE with her teacher and 2 other students, reading activity with the EA and time on a computer program. Her reading goal may no longer be appropriate. *I, 112*

44. The SLP, S.C., who met with Student in a group of 5-10 students for 1 hour per week, testified that initially she would not have recognized Student a child with autism. *I, 196, 231-233, 255*

45. According to this witness, one of the major benefits for this Student in group therapy is that she can utilize social communication skills as opposed to 1:1 therapy. *I, 234-235, 262*

46. The SLP did not believe Student required additional testing because “it’s not going to change her services,” but concurred that she continued to qualify for special education services as a student with autism. *I, 219, 266-267*

47. Although she does not do a lot of conversational, reciprocal communication, the SLP believes Student has made “huge progress” -- “she needs to learn to hopefully work her way in.” *I, 254*

48. District’s Board Certified Behavior Analyst (BCBA), qualified as an expert, reviewed Student’s SYNERGY school records and previous evaluation, as well as testimony in this case. Students on the autism spectrum “lack the skills to appropriately determine and understand the social environment....the individual on the autism spectrum can have inappropriate responses to sensory information, depending on their individual needs and characteristics.” *III, 839*

49. According to this witness a S/L therapist is the most appropriate provider to address how to broaden communication skills for autism students who cannot communicate successfully with peers. Student’s present SLP has no specialized training on the needs of students with autism, just numerous years of experience (40 plus) in serving autistic children. *I, 195-196; III, 866-867*

50. Curriculum is available outside of District to teach autistic children social

skills, e.g., Skillstreaming, Michelle Garcia-Winter's curriculum, social scripts, video monitoring. These programs have not been utilized for Student at present. *III, 841-843*

51. She opined that Student appears to be making progress in her current academic setting which would not warrant a further restriction of her educational environment. *II, 550-551; III, 859, 864-865*

52. The assistant principal, N.S., observed Student since she was first enrolled in the school. She testified Student was doing very well "making growth and progress in the classrooms she's been in." She is no longer isolated as she presented in preschool, she shares conversations with other students. A placement with her sibling in the SCS classroom (as Parent at one time advocated) would not be at all appropriate; an autism specific class would mean a different school. *II, 550-551, 563-565, 577-579*

53. Parent repeatedly told District staff that Student needed better trained staff and programs. She specifically referred to ABA therapies, and programs geared to address behavior modification and to develop social interaction skills. *III, 601, 666-667*

54. Parent testified she wanted Student's needs met; she did not have any specific placement in mind at the time of the Due Process Hearing. *III, 746*

55. Parent reports that she at present is personally cut off from communication with school staff. At IEP meetings she felt "like she was just sitting there and they were speaking about what was going to happen to [Student]." *III, 666-668, 724-726*

56. There is the expectation of regression when a student has been absent from school for a period of time. *I, 259; III, 833*

57. Several witnesses who had contact with Student were unaware of or had limited

experience with autism, resources, and support offered by District, some lacked specific training in autism, and had only vague or no knowledge of the 11 Considerations for Students with Autism, e.g., the principal and assistant principal, paraprofessional (EA), SLP, special education head teacher, and Student's present teacher. *I, 90, 159, 195-196, 291-292; II, 328, 481, 537-538*

58. Testimony was disputed on the subject of how much or how well Student is able to communicate with peers at the present time. It remains a problem as does Student responding off-topic. Her IEP does not have a specific communication goal. *Cf. N.S., testimony I, 550. 563-565, 577-579/ S.C. testimony, I, 241-242, 258-259,*

59. Student has made progress in her academic and IEP goals. *I, 32, 44-45, 202, 255-256, 259, 263; II, 424, 446, 563-564; III 859, 864*

60. In providing services to children in special ed, the LEA has shifted its focus on eligibility to what services a student requires to succeed, "realizing that students with autism can require supports and services in a variety of different areas." *III, 830*

DISCUSSION

Appropriateness of Student's IEP

The *Rowley* case stands as the landmark case for subsequent interpretation of the Individuals with Disabilities Act (2004). The Supreme Court concluded that the Act by requiring "the basis floor of opportunity" meant "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." The *Rowley* court promulgated a two-part inquiry to determine the appropriateness of a FAPE: 1) Has the State complied with the procedures set forth in IDEA, 2) Has the individualized education program been

developed though IDEA procedures reasonably calculated to enable the child to receive educational benefit? The Court, did not, however, specifically set any one standard for determining when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982)

Subsequent lower courts have attempted to define “reasonably calculated,” promulgating various standards: *Doe v. Board of Educ. of Tullahoma City Schs.*, 20 IDELR 617 (6th Cir. 1993) [*Chevrolet not a Cadillac*]; *O’Toole v. Olathe Dist. Schs. Unified Sch. Dist., No. 233*, 28 IDELR 177 (10th Cir. 1998), *Urban ex rel Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 729 [*more than de minimus educational benefit*]; *Dong v. Board of Educ., of the Rochester Cmty. Schs.*, 31 IDELR 157 (6th Cir. 1999) [*no maximization of benefit required*]; *McLean v. District of Columbia* 118 LRP 43652 (D.D.C. 8/31/18) [*some progress*]

The U.S. District Court in *Andrew F.* used the 10th Circuit standard of “some educational benefit” to meet FAPE requirements. 64 IDELR 38 (2014). The 10th Circuit Court of Appeals affirmed. 66 IDELR 31 (U.S. Ct.App. 2015) The Supreme Court’s decision in *Andrew F.* rejected the line of cases from circuit courts around the country using various standards to measure educational progress. The court held that a school district must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of that student’s circumstances; the program must be “appropriately ambitious” with “challenging objectives.” *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (U.S. 2017) This standard has been met by District.

Methodology/ Parental Input/ Other Issues

Parent raised a number of issues ancillary to whether or not District provided Student

with FAPE. At the time of the hearing, Parent was unclear about what she actually wanted for her child that the District was not providing. She did want something more, which was unspecified. *Parent testimony III, 635-746.*

It is well established that a district is responsible for choosing the methods, programs and service providers by which it implements a student's IEP. *Slama v. Sch. Dist. No. 2580*, 259 F.Supp. 2d 880 (D. Minn 2003) [choice of EA]; *O'Dell v. Special Sch. Dist.*, 47 IDELR 216 (E.D. Mo. 2007) [no parental, unilateral decisions]; *Shaw v. Dist. of Columbia*, 238 F. Supp. 2d 127; *Dong, op. cit. [Lovaas/Teach programs]*; IDEA does not mandate an education according to a parent's desires.

The *Deal* case acknowledges a wide range of methodology cases, concluding that an ABA program is not the only way for a student with autism to be educated. A school district does not have to provide "the precise education the parents demand." "Were the [district's] programs as good as the educational programs the parents developed for [the student] Perhaps not. But that is not the relevant question." *Deal v. Hamilton County Dept. of Educ.*, 49 IDELR 123 (6th Cir. 2008)

The testimony in this case revealed that bullying was addressed by the school, the child was not a behavior problem, elopement was not an issue, health was not an issue, evaluations were not necessary based upon performance indicators, and that Student was progressing in her educational goals, considering her diagnosis of her autism. She participated in regular education classes with her peers, was not isolated, and was improving in social contact, slow as it may be. Her present placement was less restrictive than any originally proposed by Parent at IEP meetings. Socialization, the major concern of both Parent and District, was appropriately addressed by District. IEPs were not the same from year to year and noted her progress -- dramatic since her Kindergarten

years. The District consult is still pending, which could recommend changes in her program based upon what is reasonably calculated to enhance her education given her individual circumstances.

IDEA requires an IEP to include “a statement of the special education, related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child.” *34 CFR 300.320(a)(1)* Specific instructional methodologies are not required to be identified in an IEP. *34 CFR 300.320(d)(1)*

There was no proof that Student’s program resulted from administrative convenience. Many, if not all, of Parent’s concerns have been addressed in the findings and conclusions herein.

CONCLUSIONS OF LAW

1. The DPHO has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA 2004). *20 U.S.C. §§ 1400, et seq., 34 CFR §§ 300.511--300.514 (2006), and the New Mexico Special Education Regulations, 6.31.2.13(I) NMAC (2004).*

2. The main purposes of IDEA are: (1) to ensure that all children with disabilities have available to them FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living; and (2) to ensure that the rights of children with disabilities and their parents are protected. *20 U.S.C. §1400(d)(1)*

3. A parent or a public agency may initiate a hearing to address matters regarding the education of a particular child, i.e., “any matter relating to the identification evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” *20 U.S.C. §1415(b)(3), (6) (2000); 34 CFR §§ 300.503(a); 300.507(a)(1) (2004); NMAC 6.31.2.13(I)(3) (2004)*

4. All procedural safeguards required by IDEA and implementing regulations, and the New Mexico Special Education Regulations have been complied with.

5. Procedural errors, if any there may be, were not serious enough to result in a denial of FAPE.

6. The applicable time limit under the Statute of Limitations for IDEA actions is two years beginning prior to the date of filing the request for due process, in this case, prior to July 31, 2019. Any findings or exhibits admitted with respect to information prior to that date is for historical purposes only.

7. Extensions of time limits have been granted at the request of one or both of the parties. *34 CFR §300.510©*

8. Parent's complaint has met sufficiency requirements. *34 CFR §300.508(6)(d)*

9. Eligibility of Student to receive special education and related services under IDEA as autistic is not at issue. *34 CFR § 300.8(a); 34 CFR § 300.8 (b)(9) and (10)*

10. Student's IEP of March 18, 2019 was not predetermined. Parent participated in the IEP meeting. Though the team rejected Parent's proposal for a more restricted setting does not mean she was not heard. *34 CFR 300.116(a)(1); K.L.A. v. Windham Southeast Supervisory Union, 54 IDELR 112 (2nd Cir. 2010, unpublished); J.E. and C.E. v. Chappaqua Cent. Sch. Dist., 68 IDELR 48 (S.D.N.Y. 2016)*

11. A parent is not entitled to select who attends the IEP meeting; this is an administrative decision.

12. A parent is not entitled to select methodologies, program, service providers, or placement. That is the province of the IEP committee as a whole of which Parent is a team *member*.

Deal, op cit.

13. The present LEA placement in a small, cross-categorical classroom represents the Least Restrictive Environment.

14. Despite deficiencies with respect to autism expertise among District's teaching staff, service providers and program generally. Student has progressed and benefitted from her education.

15. IEP goals from year to year were not the same. *F.L. Board of Educ. of the Great Neck Union Free Sch. Dist.*, 72 IDELR 232 (2nd Cir. 2018, unpublished); *K.D. v. Downingtown Area School District*, 72 IDELR 261 (3rd Cir. 2018)

16. Student's IEPs have been designed to meet this Student's individual needs and are appropriate in light of Student's circumstances. *Andrew F., op cit.*

17. A student's eligibility is not determinative of the appropriateness of a student's placement if the IEP placement and services meet the student's needs. *Heather S. v. State of Wisconsin*, 26 IDELR 870 (7th Cir. 1997)

18. A review of an IEP must determine whether the IEP is reasonable, not whether it is ideal. The reasonableness standard in light of Student's particular circumstances was followed and was appropriately ambitious and challenging. *Andrew F., op cit.*

19. Parent bears the burden of proof that Student was denied FAPE. *Schaefer v. Weast*, 126 S. Ct. 528 (2005); *Johnson v. Independent School Dist. No. 4 of Bixby*, 921 F. 2d 1022 (10th Cir. 1990)

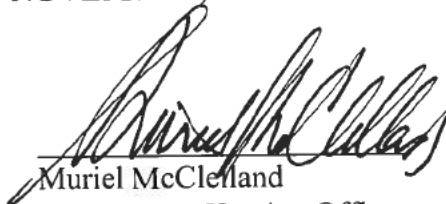
20 Parent has failed to met her burden of proof.

21. District has provided and has not denied Student FAPE.

ORDER

Cause No DPH 1920-02 is dismissed with prejudice.

THIS DECISION IS ENTERED THIS 15th DAY OF NOVEMBER, 2019



Muriel McClelland
Due Process Hearing Officer

RIGHT TO APPEAL

Any party aggrieved by this decision has the right to bring a civil action in a court of competent jurisdiction pursuant to 20 U.S.C. § 1415(I)(2004), 34 CFR § 300.516 and 6.31.2.13(I)(25) NMAC (2007). Any such action must be filed within 30 days of receipt of the hearing officer's decision by the appealing party.

CERTIFICATE OF SERVICE

I hereby certify that I mailed
by US mail a copy of the foregoing Decision
on November 15, 2019 to the following persons:

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Muriel McClelland