

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17 th Street, Suite 1300 Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>[Parent], Complainant,</p> <p>vs.</p> <p>BOULDER VALLEY SCHOOL DISTRICT RE 2 Respondent.</p>	
AGENCY DECISION	

On October 1, 2012 the Colorado Department of Education, Exceptional Student Services Unit, received a due process complaint filed by [Parent], []. [Parent] on behalf of [Student], alleges that the Boulder Valley School District RE 2 (District) is proposing to deny [Student] a free and appropriate public education under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(f), its implementing regulations at 34 C.F.R. § 300.511, and Colorado’s Exceptional Children’s Educational Act (ECEA), 1 CCR 301-8. The complaint was forwarded to the Office of Administrative Courts and assigned to Administrative Law Judge (ALJ) Hollyce Farrell for an impartial due process hearing. Hearing was held in Denver, Colorado on January 29 and 30, 2012.¹ The parent was represented by Kristin N. Weissinger, Esq. The District was represented by Kathleen Sullivan, Esq. At hearing, the ALJ admitted into evidence Complainants’ exhibits B, G, through T and V and the District’s exhibits 1 – 18, 20 – 25, 34-26, and 37-61. The proceedings were recorded in courtroom 2.

ISSUES PRESENTED

Whether the District’s decision to move [Student]’s placement from [Elementary School 1] to the Integrated Learning Center at [Elementary School 2] (ILC) provides [Student] with a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) in the Least Restrictive Environment (LRE).

¹ The hearing was originally scheduled for December 12 and 13, 2012. At the request of the Appellant, on December 10, 2012, the hearing was continued to January 29 and 30, 2013 and the decision deadline was extended beyond the 45-day time limit provided in state and federal regulations to February 13, 2013.

FINDINGS OF FACT:

Based on the evidence in the record, the ALJ finds the following:

1. [Student] is a [age] boy who was born on [date of birth]. He is in the [grade] at his school of choice, [Elementary School 1]. [Student] has been diagnosed with Attention Deficit/ Hyperactivity Disorder. He also is cognitively delayed and has a speech and language impairment.
2. [Student] qualifies for special education services. As a student with a physical disability and speech language impairment, [Student] meets the standards as having “a multiplicity of severe educational needs which prevent the child from receiving reasonable educational benefit from general education.”
3. [Student] is a very friendly and enthusiastic child who works hard to make progress academically and socially. He has also had to go through several difficult transitions in his life.
4. [Student] [], and has been a special education student since he entered preschool.
5. At [Elementary School 1], [Student] receives occupational therapy and speech and language therapy. He has a modified curriculum, and works with a special education teacher and the social worker at [Elementary School 1]. He spends part of his day in the general education classroom, and part of his day in the special education classroom.
6. [Student], who has impulsivity issues, has difficult time sticking with the structure of the classroom, and sometimes wanders.
7. [Elementary School 1] has a curriculum that integrates art into all of its subjects, and [Student] benefits from that curriculum because he is a visual learner.
8. [Student] is happy and comfortable at [Elementary School 1], and has developed social relationships with many of the adults there. The school staff is very supportive of [Student], and has worked with him to help him reach the educational and social goals set forth in his IEPs over the years. They care about [Student] and want what is best for him.
9. [Student] has made incremental progress in reading, math and speech and language. [Student] has also made some progress with his social skills; for example, he is learning to use appropriate greetings such as giving people a “high five” when he greets them instead of giving hugs. He is not consistent with the goals he makes in his social behaviors without prompts and reminders. For example, after two years of instruction, he still forgets that a high five is a more appropriate greeting than a hug.

10. After breaks from school, such as the summer break, [Student] shows regression in his academic and social skills. [Student]’s progress reports show that he made “adequate progress” in most areas, and sometimes met the goals of his IEPs in some areas. Making “adequate progress” does not mean that [Student] is able to independently perform the task.

11. [Student] is at a kindergarten or first grade level in academics and a kindergarten or first grade level socially. It takes [Student] a long time to learn a skill, and he sometimes loses track of remembering how to do it.

12. [Student] has significant social needs, needs to learn to understand boundaries, and needs to develop relationships with peers.

Incidents in First and Second Grade

13. When [Student] was in first and second grade, he engaged in inappropriate touching with a girl who also had behavioral special needs. [Student] and the girl would find a private place and touch each other’s private parts. The behavior was consensual, and perhaps, initiated by the girl.

14. [Elementary School 1] considered the inappropriate touching between [Student] and the girl to be a safety concern. [Student]’s IEP team considered placing [Student] in a different school at that time, but because his [Parent] opposed the suggestion, [Student] remained at [Elementary School 1]. [Elementary School 1], increased supervision of [Student] and the girl to ensure that they were not given an opportunity to be alone together. The IEP team also prepared goals and objectives to help [Student] learn appropriate social greetings and interactions.

15. At [Elementary School 1], students are in a loop where the students in a classroom are together for first, second and third grades. Because of the incident with the girl in first and second grade, [Student] was transferred into a different classroom in third grade. He was successful with the transition. Although his general education class was different, [Student] still had the same special education classroom, and was familiar with some of the peers in his new classroom because he had known them in kindergarten. [Student] did not demonstrate any regressive behaviors when he went to the new third grade classroom.

16. After the special education teacher worked daily with [Student] regarding appropriate behavior, [Student] seemed to not focus on the inappropriate touching, and the school became less concerned about the behavior. However, they continued to supervise him closely.

Incident of August 28, 2012

17. On August 28, 2012, [Elementary School 1] held back to school night for its students' parents. [Elementary School 1] provided free childcare on the playground which was supervised by three adults with experience in supervising children. The parents were in the school building attending back to school activities.

18. While the children were on the playground, the [Elementary School 1] principal, [Principal], observed [Student] sitting with a kindergarten girl. [Principal] noticed that [Student] was leaning in towards the girl and was displaying an intensity towards her. [Principal] walked over to the [Student] and reminded him to use appropriate behavior that night. [Student] said he would.

19. [Principal] then asked a paraprofessional, who was one of the supervisors on the playground, to keep an extra eye on [Student] that evening. Later, [Student], walking hand-in-hand with the girl, approached one of the supervising adults and asked to be allowed to enter the school building. That adult told him that he could not.

20. After being denied entrance into the building, [Student] told the kindergarten girl that he knew a secret way into the school, and for her to use that entrance and meet him inside the building. He then approached a different adult supervisor by himself, and asked if he could go into the building to get a drink of water. Because he was alone, the adult gave him permission to do so.

21. About 15 minutes later, the school's art teacher, who was also providing supervision on the playground, noticed that [Student] was missing, and went into the school to find him. She found [Student] and the kindergarten girl in the boys' bathroom. The girl had her dress pulled down around her ankles, and her panties had also been pulled down. The girl, at some point, told [Student] that she was uncomfortable with the "game" and did not want to play anymore. The art teacher immediately reported the incident to [Principal].

22. [Principal] got [Student] and the girl and asked them what happened. They both said that the incident was [Student]'s idea. [Principal] reported the incident to [Student]'s [Parent] and the girl's mother that evening.

23. After speaking with someone at the District the next morning, [Principal] began treating the incident as a school disciplinary matter, and followed the disciplinary procedures. He also contacted social services, as required by law.

24. [Principal] interviewed [Student] in the presence of his assistant. During the interview, [Student] admitted that the incident with the kindergarten girl was completely his idea, and repeated several times that he liked the girl's yellow underwear. However, [Student] was more focused on his upcoming birthday, and did not seem to appreciate the seriousness of the incident. [Principal] also interviewed the girl's mother, and the playground supervisors for the back to school night event. At the conclusion of

his investigation, [Principal] determined that a 5 day suspension for [Student] was appropriate.

25. [Principal] was very concerned because [Student]'s behavior was different and much more serious than the previous occasions when he had engaged inappropriate behavior where the behavior was consensual and with a same aged girl. This incident involved a much younger child and [Student] had directed the whole incident by arranging to meet the girl inside the school after being told the two of them could not enter the building.

26. [Principal] had strong concerns that [Student] would repeat the behavior, and that risk was incredibly serious. He was also very concerned that [Student] was vulnerable of being a victim of inappropriate sexual behavior and that [Student] did not realize the seriousness of the incident.

27. As required by law, [Principal] scheduled a re-admittance/manifestation conference for [Student] on September 11, 2012.

28. At the manifestation meeting, which [Student]'s [Parent] attended, it was determined that [Student]'s behavior was the result of his disability; therefore, no further discipline was imposed.

29. On September 27, 2012, the District performed a Functional Behavior Assessment on [Student]. [Student]'s [Parent] participated in that assessment by completing a number of instruments. [Social worker], the social worker at [Elementary School 1], who is very familiar with [Student], completed the Functional Behavior Analysis. Input was also provided from [Student]'s special education teacher, [Special Education Teacher].

30. [Student]'s IEP team decided to hold his Triennial IEP meeting on October 3, 2012, which moved it up a few months, based on the August 28, 2012 incident. All members of [Student]'s IEP team were present, including [Student]'s [Parent] and [Student]'s advocate. After considering all of the information, the IEP team proposed intense focused instruction around physical behavior and inappropriate sexual behavior for [Student]. The IEP team further determined that [Student] needed a more intensive educational setting that [Elementary School 1] could provide for him.

31. [Elementary School 1] provided prior written notice of the IEP team's proposed action for [Student] after the team made its proposal and prior to implementing the action.

32. [Elementary School 1] began working on a transition plan for [Student] to move to an ILC at [Elementary School 2] or [Elementary School 3]. The IEP team recommended that [Student] make the transition to move to an ILC program on October 15, 2012, and began developing a transition plan which would lessen the impact on [Student], and make the change a positive experience for him.

33. [Student]'s [Parent] did not agree with changing [Student]'s placement to an ILC at a different school.

34. On October 5, 2012, the District established a Behavior Support Plan for [Student], which was to be implemented on October 15, 2012. The Behavior Support Plan included the following strategies: "Set up situations where [[Student]] can receive positive attention and meaningful relationships with his peers; and Expand the number of structured leisure time activities he is involved with; and [[Student]] will comply with adult directions of appropriate choices."

35. The Behavior Support Plan further provided, "[[Student]] will need to learn to listen to peers conversations, read visual cues (emotions) of peers, and to respond to his peers on their topic or related topic [[Student]] will need to learn steps to address impulsivity including self awareness strategies for dealing with impulsivity. This would include focused instruction and reinforcement for waiting. These skills will be taught through a systemic approach over multiple settings include appropriate body touch and personal space."

36. At [Elementary School 1], while [Student]'s typically developing peers are kind to him, he does not have relationships with them because he is on a different cognitive level than they are and does not engage in a meaningful way with them. For example, his special education teacher observed him playing soccer with his peers, but was not able to communicate with them on an equal level. He would run around the field and cheer at appropriate times, but was looking to his peers for recognition which did not happen. He was not able to engage his peers with his cheering and did not have other verbal dialogue with them, nor did they have verbal dialogue with [Student]. As [Student] and same age peers age, the communication gap between them will become larger.

37. The Behavior Support Plan provided that [Student] needed to have increased opportunities for meaningful, positive attention from his peers.

38. The Behavior Support Plan could not be successfully implemented at [Elementary School 1] because there are no opportunities there for [Student] to receive positive attention from his peers and develop meaningful relationships with them because his same age peers are not at his level. Also, [Elementary School 1] does not have the time or resources to give [Student] the extent of adult directions regarding appropriate choices he needs. [Elementary School 1] does not provide the integrated setting that [Student] requires to learn appropriate behaviors.

39. Developing meaningful peer relationships is very important to [Student]'s progress in developing social skills. An ILC would provide [Student] with peers who are at his cognitive level and are working on developing the same skills that he is; he would be able to have relationships with such peers, which is essential to his social progress goals.

40. [Student]’s [Parent] and his advocate had input into the Behavior Support Plan.
41. Because it is not possible for the Behavior Support Plan to be implemented at [Elementary School 1], it has not been implemented. The plan cannot be implemented until [Student] moves to an ILC for the reasons explained in the above paragraphs.
42. [Student] needs to be in a setting where he can receive ongoing, constant and focused attention for his social skills. To become independent as an adult, it is essential that [Student] develop appropriate social skills. The staff at [Elementary School 1] does not have the time or the expertise to give [Student] that attention. An ILC would be able to provide such attention.
43. At [Elementary School 1], [Student] is in a special education classroom, known as a resource center 21 to 60 percent of his school day. His special education class can have up to 20 students, but currently has 15 or 16 students. When [Student] is not in the special education classroom or receiving occupational or speech and language therapy, he is in the general education classroom with his typically developing peers.
44. The resource room at [Elementary School 1] provides more general supports, and can serve the majority of students. An ILC, on the other hand, provides services for students, such as [Student], with more intensive needs. An ILC teacher cannot have more than 10 students in the classroom which enables the teacher and the paraprofessionals to give the students the attention they need. The staff members in ILCs, including the paraprofessionals, have specific training to provide services and teaching for students with these more intensive disabilities during the entire school day, including the time the students are in the general classroom.
45. At [Elementary School 2], the school the District thinks is most appropriate for [Student], [Student] would still spend 40 to 79 percent of his school day in the general education classroom with his typically developing peers just as he does at [Elementary School 1].
46. [Student]’s [Parent] toured both [Elementary School 2] and [Elementary School 3], and did not feel that those schools were appropriate for [Student] as they had open classroom styles (large rooms accommodating three classrooms, with each classroom being separated by a partition) as she felt [Student] would be too easily distracted in such a setting because of his sensory issues. However, the classrooms at [Elementary School 2] are clearly defined and quiet.
47. [Student]’s [Parent] also felt that [Student] would pick up negative behaviors from other students in the ILC setting. There are students in the ILC program who are not at [Student]’s level or working on the same skills on which [Student] would be working. He would not be paired with those students and would not be paired with a student who displays negative behaviors which [Student] may assimilate.

48. Because of her concerns, [Student]’s [Parent] did not agree to a change of placement from [Elementary School 1]. Moreover, she felt like the transition would be difficult for him. The District feels the most appropriate placement for [Student] would be an [Elementary School 2].

49. A change in placement for could have detrimental effects on [Student], and he could suffer some regression. He may also feel some sadness and rejection. [Student]’s IEP team considered these factors, but determined that his need for progress in his social skills outweighed any concerns related to transition.

50. Because [Student] has not been transitioned to an ILC, [Elementary School 1] is providing supervision for [Student] every minute of his school day. Although safety is no longer a concern due to the supervision, [Student]’s more intensive educational needs are not being met. For [Student], it is imperative that he internalize behavioral changes or he will likely have problems in the future as either a victim or perpetrator of sexual misconduct. Moreover, [Student] is getting older, and if he repeats his inappropriate conduct, it would be a criminal matter. It is essential that [Student] be placed in an integrated setting where he can receive the services he needs to develop appropriate social skills.

51. [Student] has inappropriate physical boundaries, and needs a plan where he is taught replacement behaviors. By having the opportunity to develop appropriate peer relationships, [Student] will be able to get the attention from peers that he needs. While adult relationships are important, they cannot fully replace the relationships that children need with their peers. [Student] would have the peer interaction and social skill education from his teachers that are essential to his progress in developing appropriate social skills at [Elementary School 2].

52. The ALJ finds that the credible and persuasive evidence establishes that the District made reasonable efforts to keep [Student] at [Elementary School 1], his school of choice, but his IEP goals can no longer be met at [Elementary School 1].

DISCUSSION

The IDEA was enacted to ensure that all children with disabilities have access to “a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.” 20 U.S.C. § 1400(d)(1)(A). A free appropriate public education (“FAPE”) is defined as “special education and related services . . . provided in conformity with an individualized education program.” 20 U.S.C. § 1401(9). The individualized education program (“IEP”) is the basic mechanism through which the school district’s obligation of providing a FAPE is achieved. *Murray by & Through Murray v. Montrose County Sch. Dist. RE-1J*, 51 F.3d 921, 925 (10th Cir. 1995). The local school district is required to develop, implement and annually revise an IEP that is calculated to meet the student’s specific needs and educate that student in the “least restrictive environment”, meaning that, “[t]o the maximum extent

appropriate,” disabled children should be educated in public school classrooms alongside children who are not disabled.” 20 U.S.C. §§ 1414(d) and 1412(a)(5)(A).

Under the IDEA, a complainant has the burden of proving by a preponderance of the evidence that the District failed to provide the student with a FAPE. *Thompson R2-J Sch. Dist. V. Luke*, 540 F.3d 1143, 1148 (10th Cir. 2008). In this case, since the Appellant is seeking to have [Student] remain at [Elementary School 1], which is contrary to the IEP developed by his team, she has the burden of establishing that the District’s educational plan was not reasonably calculated to provide [Student] to some educational benefit. Appellant, in her hearing request and her position statement does not raise a claim that [Student]’s IEP is not reasonably calculated to enable to make meaningful progress. Appellant did raise the issue that the IEP would not allow [Student] to provide FAPE in the LRE.

Behavior Support Plan and Procedural Requirements

Appellant contends that the District failed to comply with the IDEA by not attempting to implement the Behavior Support Plan before making the decision to place [Student] at [Elementary School 2]. A Behavior Support Plan is a set of interventions, supports and strategies designed to assist a student whose behavior impedes his own learning or the learning of others. 34 C.F.R. 300.324 (a)(2)(i). The failure to implement the plan at [Elementary School 1] does not necessarily violate the IDEA. 34 C.F.R. 300.320. [Elementary School 1] made reasonable and extraordinary efforts to keep [Student] at [Elementary School 1], but his IEP team ultimately concluded that placement at [Elementary School 1] would not allow [Student] to meet the goals of his IEP.

Moreover, the IEP meeting was properly noticed, and all of the statutorily required participants, including [Student]’s [Parent] and her advocate. The IEP team conducted a comprehensive review of [Student]’s educational needs. Based on all of the information available at the time of the meeting, the team proposed a comprehensive IEP for [Student]. [Elementary School 1] provided proper prior written notice of the IEP team’s proposed action for [Student], after the team made its proposal and prior to implementing the action. There were no procedural violations of the IDEA.

Least Restrictive Environment

In addition to providing personalized instruction for a handicapped child, a state must comply with the IDEA’s requirement that this personalized instruction be provided in the least restrictive environment (“LRE”). In order to do so, a state must adopt:

[P]rocedures to assure that, 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 that 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 is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(5)(B) (Supp. 1991).

Under Colorado law, each public agency must ensure that—

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 nondisabled; and

Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

1 CCR § 301-8, 2220-R-5.02; 34 C.F.R. 300.114 (a)(2)(i) and (ii).

In *L.B. v. Nebo Sch. Dist.*, 379 F.3rd 966, 978 (10th Cir. 2004), the parents of a child diagnosed with autism, unilaterally removed their child from the Nebo School District and placed her at their own expense in a private preschool. Although the student's parents generally agreed with the goals in Nebo's proposed IEP, they disagreed with Nebo's proposal to place their child at Park View. Park View is a special education preschool populated primarily by disabled students, but includes thirty to fifty percent typically developing children who interact throughout the school day with the disabled children. Following the due process hearing, the hearing officer found that Nebo did not violate the LRE requirement and that Appellants had failed to present evidence that the student was progressing on her IEP at the private preschool. *Nebo* at 973. Appellants challenged that finding on appeal. The Tenth Circuit Court concluded that Park View was not the student's least restrictive environment. *Id.* at 975.

In its decision in *Nebo*, the court held:

In enacting the IDEA, Congress explicitly mandated, through the least restrictive environment requirement, that disabled children be educated in regular classrooms to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5)(A). . . Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements. (citing *Murray v. Montrose County Sch. Dist.*, 51 F3d 921, 926 (10th Cir. 1995)). Thus, the LRE requirement is a specific statutory

mandate. It is not, as the district court in this case mistakenly believed, a question about educational methodology.

Nebo at 976.

To determine whether a school district has complied with the LRE mandate of the IDEA, the Tenth Circuit employs a two prong test. *Id.* First the court “determines whether education in a regular classroom with the use of supplemental aids and services, can be achieved satisfactorily.” If the child cannot be served exclusively in the general education classroom, the court next “determines if the school district has mainstreamed the child to the maximum extent appropriate.” *Id.* To determine the first prong, the court considers the following factors:

- (1) steps the school district has taken to accommodate the child in the general education classroom, including the consideration of a continuum of placement and support services;
- (2) comparison of the benefits the child will receive in the general education classroom with those he will receive in the special education classroom;
- (3) the child’s overall educational experience in general education, including non-academic benefits; and,
- (4) the effect on the general education classroom of the disabled child’s presence in that classroom.

Nebo at 976-77. These factors, as applied to this case, are discussed below.

With respect to the first factor, [Elementary School 1] has made significant efforts to maintain a portion of [Student]’s instruction in the general education setting over the last several years. In fact, his IEP mandates that he be in the general education classroom 40 to 79 percent of his school day. Following the incidents of inappropriate touching [Student] had in first and second grade, his IEP team questioned whether [Student] could make sufficient progress in the general education setting at [Elementary School 1] with special education supports, and decided with Appellant’s input, that he could. However, after the incident of August 28, 2012, [Student]’s IEP team undertook a comprehensive reevaluation of [Student], his progress and his educational program. The team determined that with the modifications in place at [Elementary School 1], [Student] has made incremental academic progress, but not similar functional and social progress. After considering all of the information available to it, the team concluded that [Student] could not be successful without more intensive instruction, a specialized curriculum, appropriate peers, and specially trained staff throughout the building. [Elementary School 1] cannot provide the resources [Student] needs to be successful even after taking significant steps to retain him at [Elementary School 1].

With regard to the second factor, [Student]’s IEP team appropriately concluded that he requires direct and consistent instruction through the ILC in order to acquire knowledge and functional skills, especially physical safety skills. While [Student] has

participated in the general education setting with support, all his work is modified and very different from that of his classmates because [Student]'s academic achievement ranges from kindergarten to mid-first grade level. [Student]'s classmates are kind to him, but he lacks the skills to sustain meaningful peer interaction with same-age typical peers. This gap will widen as [Student] gets older.

[Student] will receive clear benefits in the ILC. He will have the opportunity there to acquire the knowledge and skills in a key area of need from the specialized curriculum used to teach students with cognitive disabilities safe physical boundaries and appropriate social skills to protect students from perpetrating or becoming the victims of sexual abuse. [Student] will also benefit socially from having access to same-age peers with cognitive disabilities who function on a similar developmental level with whom he can have meaningful interactions. The ILC setting offers clear benefits to [Student] as it will address [Student]'s areas of essential social and functional gains.

With respect to the third factor, [Student] has made incremental academic achievements. However, he is not able to consistently maintain necessary social and functional progress. [Student]'s IEP team determined that [Student] is capable of learning appropriate social behaviors, but has not been able to maintain the skills he has been taught at [Elementary School 1]. [Student] needs more intensive instruction in this area, which he can receive at [Elementary School 2].

Finally, with respect to the fourth factor, [Student] currently participates in the general education classroom with the support of a paraprofessional. His evaluations show he is not able to make meaningful connections with his peers. Considering [Student]'s increasing struggles to relate to his peer group, the benefits he brings to classroom are now outweighed by the current risks of [Student]'s behavior if he does not receive the education he needs to acquire appropriate social skills and skills regarding appropriate boundaries. If [Student] does not acquire these skills, it more likely that [Student] will engage in another inappropriate sexual incident; such behavior would likely be considered criminal and would involve the police. It is imperative that [Student] learn the skills he needs; this need far outweighs the benefits the general classroom may receive by [Student]'s presence. Moreover, [Student] will still be in the general classroom at [Elementary School 2]; his October 3, 2012 IEP does not change the amount of time [Student] is to spend in the general classroom.

CONCLUSIONS OF LAW

1. A hearing officer's determination of whether a student received a FAPE must be based on substantive grounds. 34 C.F.R. 300.513 (a)(1). In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies – (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or (iii) caused deprivation of educational benefit. 34 CFR 300.513 (a)(2)(i) – (iii).

2. The District developed, implemented and annually revised an IEP that was calculated to meet [Student]'s specific needs and educate him in the least restrictive environment.
3. The District's October 3, 2012 IEP contained goals and objectives that were reasonably calculated for [Student] to receive educational benefit.
4. The District offered [Student] FAPE in the least restricted environment as required by the IDEA.

DECISION

[Student]'s IEP team developed a comprehensive IEP which has behavioral goals. Both parties are in agreement that the behavioral goals are appropriate. In order to achieve those goals, the IEP team determined that [Student] needed to be placed at a school with an ILC. The ALJ concludes that Appellant has not met her burden of establishing that the change in placement is not the LRE for [Student] or that it would procedurally violate the IDEA. The IEP team decision to move [Student] to [Elementary School 2] is supported by the credible evidence in this case, and the IEP plan of October 3, 2012 IEP should be implemented.

This Decision is the final decision except that any party has the right to bring a civil action in an appropriate court of law, either federal or state, pursuant to 34 C.F.R. 300.516.

DATED AND SIGNED

February 13, 2013

HOLLYCE FARRELL
Administrative Law Judge