

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING

RECEIVED
MAY 12 2017
SPECIAL EDUCATION
SERVICES

STUDENT¹,

Student,

Case No: 2017-0133

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer



School District.

FINAL DETERMINATION AND ORDER

JURISDICTION

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

BACKGROUND

The Student is a 13-year-old, male who is a seventh grade student in the District middle school. He qualifies for special education services under the disability category of autism (O), pursuant to an eligibility and IEP meeting on February 27 and March 20, 2017. The Student was found to have educational needs in the areas of: reading, written expression, math, speech/language, social skills and social communication. The Student is currently enrolled in co-taught general education classes in English, Literature and Composition, Math, Social Studies, and Science. These classes are general education classes which are co-taught with

¹ Personal identification information is provided in Appendix A.

special education teachers (i.e. there is a general education teacher and a special education teacher assigned to each classroom). The Student is also supported by the assistance of a full-time paraprofessional aide. Parent disagreed with the follow decisions: (1) the District's decision to place the Student in co-taught classrooms; (2) the District's decision regarding the Student receiving Art classes; (3) the District's decision to not place the Student with a peer support group; and (4) the District decision to place the Student in an instructional reading classroom for the 2017-2018 school year.

The Parent's original due process complaint notice was filed on November 4, 2016. (IHO Exhibit #1.) The parties participated in mediation on December 12, 2016 but were unable to resolve any of the outstanding issues. The Prehearing Conference was scheduled for January 23, 2017. (IHO Exhibits # 9-12.) However, after discussion at that time, Parent requested time to file an Amended DPCN. (IHO Exhibit # 14.) The request was granted and the Amended DPCN was accepted by the Hearing Officer on February 7, 2017 and the 45-day deadline was reset to April 17, 2017. (IHO Exhibits # 15, 18.) The parties participated in an IEP meeting on February 27, 2017, which was continued to March 20, 2017 for completion, in an attempt to resolve the outstanding issues in the Amended DPCN. However, the parties were unable to resolve the issues.

After the conclusion of the IEP meeting, Parent requested time to file a Second Amended DPCN to add an additional issue. (IHO Exhibits #25-27.) Said request was granted and the parties agreed that the due process timeline would not be reset. (IHO Exhibit #28.)

The Parties jointly requested a continuance of the 45-day deadline on March 24, 2017 to accommodate Parent's request to add an additional issue and to hold the prehearing conference and due process hearing on the requested dates. Due Process Hearing date was set by agreement

for May 4, 2017 and the decision due date was reset to May 14, 2017. The requested continuance was granted for good cause shown pursuant to this Hearing Officer's order dated April 2, 2017. (IHO Exhibits #28-29.)

The Parent opted for a closed hearing. The Due Process Hearing was held as scheduled on May 4, 2017. [REDACTED] of [REDACTED] represented the District. [REDACTED] was the District Representative. The Parent was unrepresented by counsel. The parties presented several joint witnesses.² The District presented the following Exhibits: District A-C, E-H, J-M, P-BB, DD-KK, which were admitted into evidence. The Parent presented the following Exhibits: Parent 1, 3, 11 which were admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-41. Both parties submitted oral closing statements and any case law relied upon.

ISSUES

The issues raised by the Parent are as follows:

(a) Whether the Student was denied FAPE when he was placed in a co-taught general education and special education classroom, as the co-taught classroom is not the LRE in which the Student can receive FAPE.

Parent maintains that a general education classroom is the LRE in which the Student can receive FAPE. The District maintains that the LRE is the co-taught general education/special education classroom. The Parent requests that the Student be placed in a non co-taught general education classroom.

(b) Whether the Student was denied FAPE when he was not provided with Art class for the full academic year 2016-2017.

Parent maintains that the Student did not receive Art instruction for the entire 2016-2017 academic year and was therefore denied FAPE. The District maintains that it was able to provide the Student with placement in an Art elective class. However, Parent agreed to the Student's placement in another elective class in order to avoid disruption to the Student's class schedule. The Parent requests compensatory education in the form of Art instruction in order to compensate the Student for the denial of FAPE.

² Witnesses are listed in Exhibit A.

(c) Whether the Student was denied FAPE when he was not placed with his peer support group, as required by the March 17, 2016 IEP.

Parent maintains that the Student was denied FAPE when he was not placed with his “peer” support group as required by the operative IEP. The District maintains that the Student was not required to be placed with his peer support group in order to receive FAPE. Parent requests that this Hearing Officer order the Student to be placed with his “peer” support group as required by the March 17, 2016 IEP.

(d) Whether the least restrictive environment in which the Student can receive FAPE is a general education co-taught classroom and an instructional reading class.

Parent maintains that the LRE in which the Student can receive FAPE is a general education classroom. The District maintains that the Student requires a co-taught general education classroom, and an instructional reading class for the Student's 8th grade year. Parent request that this Hearing Officer order the Student to be placed in the general education classroom for all subjects as that is the least restrictive environment in which the Student can receive FAPE.

(e) While not raised at the Prehearing Conference, during the Due Process Hearing, the Parent raised the issue of whether the Student was denied FAPE when Parent was not provided with prior written notice of the Student’s change from a general education classroom to a co-taught classroom.

Parent maintains that this change from general education to co-taught general education is a change in placement pursuant to 34 C.F.R. §300.116, 300.503 for which prior written notice was required. The District maintains that this was a change to the Student’s class schedule, not a change in placement pursuant to 34 C.F.R. §300.116, 300.503.

FINDINGS OF FACT

This Hearing Officer did not have a transcript for the May 4, 2017 testimony when writing this decision. Therefore, the following is based upon this Hearing Officer’s personal notes, recording of the hearing, and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both District counsel and the Parent, this Hearing Officer’s Findings of Fact are as follows:

1. The Student is a 13-year old male who is currently a seventh grade Student at the District middle school. He qualifies for special education services under the disability category of autism, pursuant to eligibility and IEP meetings held on March 17, 2016 and on February 27 and March 20, 2017. (District A, B; Testimony of Parent³, Aunt⁴, AP⁵, RS⁶, SW⁷.)
2. The Student has received special education services and supports throughout his educational career. (Testimony of Parent.)
3. An IEP meeting was held at the time of the Student's transition from 6th grade (elementary school) to 7th grade (middle school). The IEP team determined that the Student required individualized and specialized instruction in reading, math, and written language due to his deficits in these areas. The team also recommended individualized and specialized instruction to assist the Student to stay on task, including frequent prompting, to address areas of identified need in work completion and staying on task. (District A; Testimony of Parent, AP.)
4. At the time of the March 17, 2016 IEP meeting, the Student was able to read and perform math tasks at approximately a third grade level. (District A.)
5. The Student's IEP goals from the March 17, 2016 and March 20, 2017 IEPs are not disputed. (Testimony of AP, Parent; District A, B.)

³ Parent is a 5th grade general education teacher in a District elementary school. (Testimony of Parent.)

⁴ Aunt is a retired teacher. She holds a Master of Science degree in biology and a gifted certification. She is a 6-12 certified teacher in English and science. (Testimony of Aunt.)

⁵ AP holds Master of Science degrees in Administration and Organizational Psychology. She also holds a LBS1 certification and a type 75 certification. She is the Assistant Principal at the District middle school and oversees special education programming. She has held that position for four (4) years. She has been employed at the District middle school for twenty (20) years. She was the LEA representative for fourteen (14) years, and a special education teacher prior to that time. (Testimony of AP.)

⁶ RS is a certified reading specialist. She hold two Master of Science degrees, one as a reading specialist and the other in curriculum. She has been employed by the District for twenty-three (23) years as Spanish teacher, general education reading teacher, reading coach, and RtI Tier 2 reading specialist. She is the parent of two children on the autistic spectrum. She assessed the Student outside of the school setting at Parent's request prior to the assessments performed in 2016 & 2017. (Testimony of RS.)

⁷ SW is the school social worker. She holds an LCSW and is a certified school social worker. She has been practicing since 1995 and has been employed by the District for thirteen (13) years. (Testimony of SW.)

6. Parent was present and participated in the March 17, 2016 and February 27 and March 20, 2017 IEP meetings and her concerns were noted in both IEP documents. (Testimony of Parent, AP, CM1; District A, B.)

7. The IEP team determined that the Student could benefit from receiving instruction in Art for a full academic year due to concerns with consistency and his struggles with transitioning. (District A; Testimony of AP, Parent.)

8. This Hearing Officer finds the IEP document language of “could” to be a suggestion for the Student’s academic programming in Art instruction rather than a mandate for such programming.

9. The Student was enrolled in an elective Art class during Term 1 and Term 2. (Testimony of Parent, AP, CM1, SW.)

10. The elective Art class curriculum was the same in Terms 3 & 4 as it was in Terms 1 & 2. If the Student had participated in Art in Terms 3 & 4, the remaining terms of the 2016-2017 school year, he would have repeated the same Art class a second time. (Testimony of AP, CM1.)

11. The Student received passing grades in his Art elective class during Terms 1 & 2 either consistently performing at grade level standard or approaching grade level standard. (Testimony of Parent; PE 1.)

12. Parent expressed concerns that the Student did not initially have the assistance of his paraprofessional in Art class. The District responded by adding paraprofessional support to the Student during Art class. (Testimony of CM1; District K, L.)

13. Parent expressed concern that the Student needed to have a positive peer role model to sit next to in Art class. The District responded by seating the Student next to a friend who was a positive peer role model. (Testimony of CM1; District M.)

14. Parent requested that the Art teacher send assessments and projects home for the Student to complete. The Art teacher refused to do so as she was concerned that the Student would receive assistance completing the assessments and projects. The purpose of the assessments and

projects was to assess the Student's independent abilities, without assistance. As a general matter, teachers do not send assessments home with any students as the assessments are reused over multiple school years. (Testimony of CM1, AP; District Q.)

15. The Student's Art teacher implemented the accommodations and modifications required by the Student's IEP. (Testimony of CM1; District K.) Parent did not present any testimony or documentary evidence to the contrary.

16. In December 2016, the issue of the Student enrolling in Art class for the full school year arose. The District presented the Parent with three options, one of which was for the Student to continue to be enrolled in Art class for the full academic year. (Testimony of CM1, AP; District EE, FF, HH.)

17. Parent chose to enroll the Student in Tech Concepts, instead of Art, for Terms 3 & 4. Many of his peers continued into that class for Terms 3 & 4. (Testimony of Parent, CM1, AP; District EE, FF, HH.)

18. A social story was prepared for the Student to assist in the transition from Art to Tech Concepts. The Student walked through the schedule change with SW and a friend to assist him in understanding why the change was occurring and relay that the change was not just for him, as many of his peers would also be changing class schedules between terms. The Student successfully transitioned into the Tech Concepts classroom. (Testimony of SW, CM1, AP; District GG, HH.)

19. At the time of the Due Process Hearing, the Student was receiving passing grades in Tech Concepts. (Testimony of AP; Parent Exhibit 1.)

20. During the Student's 5th and 6th grade years, he had been provided with a "Pit Crew."

The Student's Pit Crew consisted of peers who helped to redirect him in the school setting and keep him on task. (Testimony of Parent, AP; District A.)

21. The Pit Crew concept had been successful for the Student in 5th grade. However, in 6th grade, the Student became increasingly argumentative about not needing "babysitting" and the Pit Crew concept lost its effectiveness. (Testimony of AP; District A.)

22. The IEP team determined that the Pit Crew would not continue into 7th grade as the concept was no longer effective for the Student. However, the Student's IEP accommodations provided for him to be placed with a peer "buddy" for new environments in order to assist him with transitions. (Testimony of AP, CM1; District A.) The Student's paraprofessional aide support was increased for his 7th grade year to redirect the Student in the classroom and assist him with staying on task. (Testimony of AP; District A.)

23. The Student was provided with support in the form of classroom seating next to a friend and positive peer role model. (Testimony of CM1, GE, AP, SW.)

24. The testimony of CM1, GE, AP, and SW regarding the Student's receipt of positive peer role model support, pursuant to his March 17, 2016 IEP accommodations, was uncontroverted by Parent.

25. This Hearing Officer finds the testimony of CM1, GE, AP, and SW to be credible and uncontroverted. This Hearing Officer observed the demeanor of these witnesses at hearing and found their individual testimonies to corroborate those of the others. Based upon this, this Hearing Officer finds their respective testimonies to be credible and persuasive.

26. At the conclusion of the March 17, 2016 IEP meeting, the IEP team recommended that the Student be placed in co-taught general and special education classrooms for his seventh grade core subjects – English/reading, math, social studies, and science. (District A; Testimony of AP, Parent.)

27. Parent disagreed with the IEP teams' determination regarding utilization of the co-taught methodology. In deference to Parent's concerns, the District agreed to place the Student in general education classrooms, not employing the co-teaching method, for seventh grade. (District A; Testimony of AP, Parent.)

28. The Student received the accommodations and modifications listed in his March 17, 2016 IEP to support him in the general education classrooms. (Testimony of GE⁸, CM1⁹, CM2¹⁰, SW.)

29. During the first term of seventh grade¹¹ the Student struggled with the material in his core classes. (Testimony of CM2.) In science, the Student was in a classroom with a total of fourteen students. The science teacher worked directly with the Student on many occasions. However, the Student was unable to understand the material. (Testimony of CM2; District Z, AA.)

30. The Student's core class general education teacher team and case manager held daily team meetings to discuss student progress. All of the Student's teachers expressed concerns that he was not progressing. The Student was struggling with understanding the material in English,

⁸ GE is a general education English and Literature and Composition teacher in the District. She holds a Bachelor of Science degree in elementary education with a middle school endorsement. She also holds a Master of Science degree in literacy and is a reading specialist. She has been employed by the District for seven (7) years. (Testimony of GE.)

⁹ CM1 holds an LBS1. She is the division chair for special education and a co-teacher and case manager for special education. She taught previously in a therapeutic day school. (Testimony of CM1.)

¹⁰ CM2 holds a Master of Science degree in teaching and leadership. She also holds a certification in counseling. She worked with the Student as a substitute case manager in Fall 2016 while CM1 was on maternity leave. (Testimony of CM2.)

¹¹ The school year is divided into four terms at HMS.

literature and composition, science, social studies, math. (Testimony of CM2; District G, BB, II.)

31. The Student was frequently upset, angry, and frustrated when he received homework in his classes. (Testimony of CM2, Aunt.) The Student was frustrated when he received reading homework. (Testimony of GE, Aunt; District A,C, E.) The level of the reading texts in class are seventh grade and the Student is able to read at approximately a third grade level. (Testimony of GE; District A, C, E.) The Student made frequent derogatory remarks to his paraprofessional aide as a result of his frustration. (Testimony of CM2; District Z.)

32. The Student's class schedule was changed on October 13, 2016 to co-taught core classes including English, literature and composition, math, science and social studies. (Testimony of Parent, AP, CM2, GE.)

33. Co-taught and non co-taught classes are both general education classrooms. Co-teaching is a methodology employed by educators to provide additional support to students requiring it, while educating them in the general education environment. The curriculum is the same for co-taught and non co-taught classes. In a co-taught general education classroom, there are two teachers and a combination of general education and special education students. The teaching staff consists of one certified general education teacher and one certified special education teacher. The co-taught methodology allows the teachers to divide the students into groups to do more individualized instruction. There is more opportunity for peer interaction in the form of group work in the co-taught classrooms. The co-taught classes share the same curriculum and must meet the same Illinois state required standards as the non co-taught classes. (Testimony of CM1, AP, GE.)

34. Based upon the testimony presented at hearing this Hearing Officer finds the co-taught classroom placement to be a general education placement. In both co-taught and non co-taught classrooms the Student has the opportunity to be educated with non-disabled peers. This

Hearing Officer further finds that co-teaching is a methodology employed by educators to provide additional support to students who require it within the general education setting. This finding is based upon the testimony of CM1, AP, GE, CM2. This Hearing Officer finds the testimony of these individuals to be credible and persuasive based upon their respective educational backgrounds, professional experience, and demeanor while testifying at hearing.

35. CM2 met with Parent on October 11, 2016 to discuss the change to co-taught classes. She met with the Student and SW on October 12, 2016 to walk around the school and discuss the change to his schedule. The Student was excited about the schedule change. (Testimony of CM2, SW.)

36. A social story was created to assist the Student with the transition from non co-taught to co-taught classes, as was required by his IEP. (Testimony of CM2, AP, SW, Parent; District A, JJ.)

37. Parent did not receive written notice of the change in the Student's schedule from non co-taught to co-taught classrooms prior to the October 11, 2016 meeting. (Testimony of AP.)

38. RS assessed the Student in reading in September 2016 and again in January – February 2017. She administered the BRI and DRA assessments. (Testimony of RS; District W.)

39. During the Student's sixth grade year, the STAR assessment reflected a grade level equivalent of 3.9 in August 2015 and a 3.1 grade level equivalent in December 2015. The Student's reading scores declined between August and December 2015. (Testimony of RS; District A, C.)

40. In December 2016, the Student's reading skills were assessed using the STAR assessment. At that time, the Student's grade level equivalent reading score indicated that he was reading at a second grade, second month level. (Testimony of RS; District E.)

41. The BRI and DRA assessments, performed in February and March 2017, revealed that reading at the third grade level is too difficult and would cause frustration for the Student. (Testimony of RS; District E.) At the time of those assessments, the Student was placed in a seventh grade literature and composition class. The results of RS' assessments indicate that the Student should be placed in an instructional reading class. (Testimony of RS; District A, C, E.)

42. During his 6th grade year, the Student received both push-in and pull-out individualized reading instruction. He received 150 minutes per week of individualized reading instruction in the general education classroom and 100 minutes per week of individualized reading instruction outside of the general education environment. (Testimony of AP; District A.)

43. The Student did not receive the same level of reading support in the 7th grade English and literature and composition non co-taught general education classrooms. However, the District initially placed the Student in those classes at the beginning of his 7th grade year at Parent's request. (Testimony of AP; District A, B.)

44. Co-taught core classes and an instructional reading class would be similar to the push-in and pull-out individualized reading instruction that the Student received in 6th grade. (Testimony of AP; District B.)

45. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Student's reading abilities declined in the absence of the support of an instructional reading class. This Hearing Officer further finds the testimony of RS, and her recommendation with respect to the Student's placement in an instructional reading class to be

credible and persuasive. This credibility determination is based upon RS' education, training, experience, the extent of her interaction with the Student, and her demeanor while testifying at hearing. RS's testimony and recommendation was also corroborated by the testimony of GE,

CM2, CM1, and Aunt.

46. The Student's March 20, 2017 IEP goals are consistent with the recommendation for an instructional reading classroom placement. Parent and Aunt did not disagree with the IEP goals. (Testimony of AP; District B.)

47. The Student received support in all classes from a full-time paraprofessional aide. Parent did not dispute this IEP team determination. (District A, B.)

48. The Student participated in non co-taught general education classes for all of his elective classes. (District A, B.)

49. The Student was meeting his IEP reading goals during his 6th grade academic year. (District F.)

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of Parent and counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

Free Appropriate Public Education (FAPE)

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In order to determine whether a school district has provided a FAPE requires the determination of whether the school district: (1) complied with the procedural requirement(s) of IDEA, and (2) developed an Individualized Education Program ("IEP") that is "reasonably calculated to enable

the child to received educational benefits.” *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982).

An affirmative determination in favor of the school district with respect to both prongs of the *Rowley* test leads to an additional inquiry regarding the child’s educational placement.

In the instant matter, the second amended due process complaint notice filed by the Parent does not allege procedural violations of the Student’s IEP. However, the Parent alleges two substantive violations of the Student’s IEP: (1) that the Student was not provided with Art class for the full academic year and (2) that the Student did not receive peer support, both in violation of the March 17, 2016 IEP. (IHO Exhibit # 25, 28; FF #5.) Evidence submitted by the District and the Parent’s own testimony indicates that the Parent was present at the Student’s IEP meetings on the March 17, 2016 and on February 27 and March 20, 2017. Parent’s concerns were noted in the “Additional Notes” sections of both documents. (FF # 6.) The Parent’s request, with respect to the Student’s placement in a non co-taught general education classroom was noted, discussed, and considered by the IEP team. Further, the team deferred to Parent’s request and agreed to place the Student in non co-taught general education classes for his seventh grade year. (FF #18-20.) Therefore, the Parent was afforded the procedural safeguard to participate in the IEP meeting and placement decisions. 34 C.F.R. 300.501(b) &(c).

With respect to the two alleged substantive violation of the Student’s IEP, “[t]he primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child.” *Rowley* at 207. Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman v. Illinois State Bd. of Educ.*, 852

F.2d 290, 297. “[T]he IEP should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.” *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034, 3036 (1982). “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7th Cir. 2004.) “Objective factors, such as regular advancement from grade to grade, and achievement of passing grades, usually show satisfactory progress. *Id.*”

Parent alleges that the District denied the Student FAPE when it failed to provide the Student with an Art elective class for a full academic year in violation of the March 17, 2016 IEP. The testimony and documentary evidence presented at hearing illustrate the following: The language of the IEP states that the Student “could” benefit from receiving Art instruction for a full academic year. (FF #7.) This Hearing Officer found that language to be a suggestion for the Student’s academic programming rather than a mandate that he must receive such programming in Art instruction. (FF #8.) Further, in December 2016, the District was prepared to provide the Student continued Art instruction in Terms 3 & 4. (FF # 16.) However, due to the class scheduling changes involved in the Student’s continuation in Art class, Parent chose to instead enroll the Student in Tech Concepts and he successfully transitioned into that general education elective with a majority of peers with whom he had previously been enrolled in Art. (FF#16-18.) At the time of the Due Process Hearing, the Student was successful in Tech Concepts and was earning passing grades in that course. (FF #19.)

While Parent argues that she was forced by the District to place the Student in Tech Concepts thus denying him FAPE, this Hearing Officer finds to the contrary. Parent was

provided with three options for the Student's elective classes for Terms 3 and 4. (FF #16.) Parent chose to enroll the Student in Tech Concepts instead of continuing in Art class. (FF #17.) Further, had the Student continued in Art for Terms 3 and 4, the class would have consisted of the same curriculum the Student had learned in Terms 1 and 2. (FF #10.) This Hearing Officer finds that there was no testimony or documentary evidence presented to suggest that the Student needed to repeat Art class in order to receive FAPE. The Student received his IEP accommodations and modifications in Art class, had the support of his paraprofessional aide, and was seated next to a peer buddy. (FF # 12-13, 15.) Further the Student received passing grades in Art class during Terms 1 and 2 (FF #11.) These factors are all indicia that the Student received an educational benefit as required by IDEA. Based upon the testimony and documentary evidence presented at hearing, this Hearing Officer finds that the Student received a FAPE while enrolled in Art class. The fact that he was enrolled in Tech Concepts for the second half of the 2016-2017 school year, at Parent's option, was not a violation of the Student's IEP and therefore, did not result in a denial of FAPE. The Parent's assertion to the contrary is without merit.

Parent next alleges that the Student was denied FAPE when he did not receive peer support in his classes. However, this Hearing Officer finds to the contrary. While the Student did not receive an assigned Pit Crew of peers to support him, the testimony and documentary evidence presented clearly illustrate that this was considered by the IEP team and rejected as the concept had lost its effectiveness for this Student. (FF #21-22.) The Student's IEP provided for a peer "buddy" in new environments and CM1, GE, AP and SW all credibly testified that the Student was seated next to familiar, friendly, positive peers in his classes. This testimony was uncontroverted by Parent. (FF 23-25.) While at hearing Parent maintained the need for a Pit

Crew, “[t]he primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs, was left by the IDEA to state and local educational agencies in cooperation with the parents or guardians of the child.” *Rowley* at 207. Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman v. Illinois State Bd. Of Educ.*, 852 F.2d 290, 297 (7th Cir. 1988); *Williams v. Milwaukee Public Schools* (E.D. Wis. 2012). Parent provided no evidence to suggest that continuing to provide the Student with peer support in the form of a Pit Crew was effective or necessary to provide the Student with FAPE. This Hearing Officer finds that at all times in question the Student was provided with appropriate peer support as required by his IEPs and was thus provided FAPE. The Parent’s suggestion to the contrary is hereby denied.

Parent does not dispute any of the other provisions of the Student’s IEP or the Student’s IEP goals. (FF# 5.) Therefore, this Hearing Officer finds, based upon the testimony and documentary evidence presented at hearing that the Student’s March 2016 and March 2017 IEPs were reasonably calculated to enable the Student to received educational benefits. As this Hearing Officer has found that both prongs of the *Rowley* test have been satisfied, and that the Student has been provided FAPE, the *Rowley* test leads to an additional inquiry regarding the Student’s educational placement. This Hearing Officer’s inquiry thus focuses on the following:

Least Restrictive Environment (LRE)

Under IDEA, the School District has an obligation to educate a student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. 1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7th Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir. 2002). The Illinois School Code and implementing regulations also require

that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular classroom cannot be achieved with the use of supplementary aids and services. 20 U.S.C.A 1412(a)(5)(A); 34 C.F.R. 300.114(a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross supra*. See also *Beth B., supra*. “The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so. *Id.* The District may change a student’s placement to a more restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement. *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). Courts have consistently held that the progress must be more than minimal. *Polk v. Central Susquehanna Intermediate Unit 16*, IDERL 130 (3rd Cir. 1988). When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district’s recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Feb. 27, 2012).

In the instant matter, the Parent alleges that the Student was denied FAPE when his class schedule was changed and he was placed in co-taught general education classes. Parent further alleges that co-taught classes are not the least restrictive environment. However, this Hearing Officer finds to the contrary. The “least restrictive environment” mandate of IDEA requires that children with disabilities be educated in regular classes with children who are not disabled,

unless the nature or severity of the disability is such that the education in regular education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C.A 1412(a)(5)(A); 34 C.F.R. 300.114(a)(2)(ii); 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Educators “have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents.” *Lachman* at 297. A co-taught classroom is a general education classroom where students with disabilities are educated alongside their non-disabled peers. (FF #33-34.) This educational model embodies the mandate of IDEA. The testimony at hearing illustrated that the co-taught classrooms in which the Student was placed contained both disabled and non-disabled students and provided more opportunities for educational interaction between disabled and non-disabled students, as students worked in groups and had more opportunities for peer collaboration than those which existed in the general education classrooms alone. (FF#33-34.) The testimony and documentary evidence presented at hearing supported the District’s contention that the Student was struggling and unable to make educational progress in the general education setting without the additional supports that the co-teaching model provided. (FF #28-31.) The District changed the Student’s class schedule on October 13, 2016 to co-taught classrooms for his five core subject areas. (FF #32.) The Student was provided with a social story to assist him with the transition and he was excited about the schedule change. (FF #35.) This Hearing Officer finds that the District followed the mandate of IDEA and at all times in question provided the Student with FAPE. The District initially deferred to the Parent when she requested that the Student be placed in a general education setting for his 7th grade year. (FF #27.) When the Student struggled to make academic progress in the non co-taught environment while receiving all accommodations and modifications required by his IEP, the District implemented the co-teaching methodology in order to provide

the Student with additional support while maintaining him in the general education setting. (FF #28-32.) Parent's assertions to the contrary are not supported by the hearing record.

While not raised in her second amended due process complaint notice or at the prehearing conference, Parent alleged at hearing that the lack of prior written notice of the Student's change in placement from general education to co-taught general education served to deny FAPE. However, based upon the above analysis, this Hearing Officer finds that the District's change of the Student's core classrooms from general education to co-taught general education was not a change in placement pursuant to IDEA. The Student continued to be educated in the general education classroom setting with access to and interaction with non-disabled peers for his five core class requirements. The Student also continued in the general education setting for his elective classes. The District's change of the Student's class schedule was a change of teaching methodology in order to provide the Student increased support and allow him to remain in the general education setting. Parent presented no evidence or case law to support her position to the contrary. Therefore, Parent's claim that the District's lack of written notice to her of the Student's class scheduling change denied FAPE is without merit.

Parent's final contention is that the March 20, 2017 IEP, in which the IEP team determined that the Student will receive 235 minutes per week of specialized reading instruction outside of the general education setting is not the least restrictive environment in which the Student can be provided FAPE. Parent further contends that the Student should remain in the general education setting with no additional reading support. This Hearing Officer finds to the contrary.

The Student is currently enrolled in co-taught 7th grade classes for his core subjects. (FF# 32.) The reading level of the texts and materials in the Student's classes are grade level

materials. (FF# 31.) During his 6th grade academic year, the Student received both push-in and pull-out individualized reading instruction. He received 150 minutes per week of individualized reading instruction in the general education classroom and 100 minutes per week of individualized reading instruction outside of the general education environment. (FF# 42.) STAR reading test results reflect the Student reading at the third grade level during the 2015-2016 academic year. Further, the Student was meeting his IEP reading goals at that time. (FF# 39, 49.) For 7th grade, the Student was initially placed in general education classes at Parent's request. In this setting, the Student did not receive additional individualized reading instruction. (FF# 43.) The Student struggled with the 7th grade course material and was often upset, angry, and frustrated when he received homework in his classes and reading homework. The Student's Aunt, who tutors him in reading outside of school, corroborated the testimony regarding the Student's expressed frustration with reading. (FF# 31.) The Student's reading skills were assessed in December 2016 and in February-March 2017. In December 2016, the Student was reading a second grade, second month equivalent level. (FF #40-41.) This Hearing Officer finds that the testimony and documentary evidence presented at hearing is clear. Without additional individualized reading support, the Student's reading abilities declined. The Student is unable to make adequate educational progress in the absence of instructional reading support. Currently, third grade reading material is too difficult for the Student and would cause frustration. (FF #41.) In order to make educational progress the Student requires placement in co-taught core classes with additional pull-out individualized reading instruction. (FF #44-45.) While Parent disagrees with RS and the IEP team recommendation on this point, educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman* at 297. Based upon the testimony and documentary

evidence presented at hearing, this Hearing Officer finds the co-taught general education methodology with additional pull-out instructional reading class services to be the least restrictive environment in which the Student can receive FAPE. Parent's assertions to the contrary are not supported by the evidence.

Therefore, it is the determination of this Hearing Officer that, at all times in question, the District has provided the Student with a FAPE in the least restrictive environment. The least restrictive environment is the co-taught methodology used in the general education setting with additional pull-out instructional reading support. Parent's assertions to the contrary are unsupported by the evidence and Parent's requested relief is hereby denied.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Parent's requested relief is denied and the complaint and amended complaints are dismissed with prejudice.

NOTICE OF RIGHT TO REQUEST CLARIFICATION

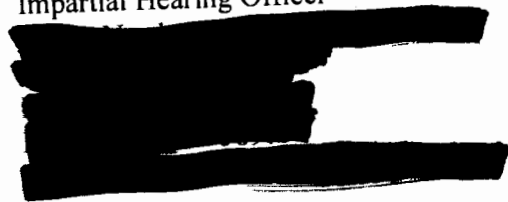
Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: May 12, 2017

/s/ Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett,
Impartial Hearing Officer



APPENDIX A

[REDACTED] v. [REDACTED]

Case No: 2017-0133

Child	[REDACTED]
Attending School	[REDACTED] Middle School (MS)
Child's Parent(s) (Mother)/Petitioner	[REDACTED] (Parent)
Joint Witnesses:	
[REDACTED]	Tutor & Student's Aunt (TF)
District Witnesses:	
Reading Specialist	[REDACTED] (RS)
Literature & Composition General Ed Teacher	[REDACTED] (GE)
Case Manager & Special Education Teacher	[REDACTED] (CM1)
Case Manager & Special Education Teacher	[REDACTED] (CM2)
School Social Worker	[REDACTED] (SW)
Assistant Principal [REDACTED] Middle School	[REDACTED] (AP)

ILLINOIS STATE BOARD OF EDUCATION
IMPARTIAL DUE PROCESS HEARING


Student,

Case No: 2017-0133

v.

Janet K. Maxwell-Wickett,
Impartial Hearing Officer


School District.

CERTIFICATE OF SERVICE

I, Janet Maxwell-Wickett, certify that on May 12, 2017, copies of the *Final Determination & Order* were served upon the following persons in the manner indicated:

Sent via Certified U.S. Mail & Electronically via Email:





ILLINOIS STATE BOARD OF EDUCATION

Sent Electronically via Email Only

Andrew Eulass
aeulass@isbe.net

Wanda Schoneweis
wschonew@isbe.net

Dated: May 12, 2017

/s/ Janet K. Maxwell-Wickett
Janet K. Maxwell-Wickett, Hearing Officer

