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Litchfield Elementary School District
Respondent.

ADMINISTRATIVE LAW JUDGE DECISION

APPEARANCES: Parent [REDACTED] appeared on behalf of Petitioners; attorney Jennifer N. MacLennan, GUST ROSENFELD P.L.C., appeared on behalf of Litchfield Elementary School District (Respondent School District) and was accompanied by school representative Melissa McComb. Certified Court Reporter Marta M. Johnson was present and recorded the proceedings as the official record of the hearing.

WITNESSES:² [REDACTED] Petitioner (**Parent**); **Melissa McComb**, Director of Special Education; **Lisa Lomelino**, School Psychologist; **Anne Clanin**, Special Education Instructional Coach and Inclusion Specialist; Felicia Rodriguez, Special Education Teacher (**Special Education Teacher**); **Ronald Sterr**, Principal; Kayla Velasquez, English Teacher at L. Thomas Heck Middle School (**English Teacher**); Lance Sullivan, Math Teacher at L. Thomas Heck Middle School (**Math Teacher**).

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

Parent brought this due process action, on behalf of Student, challenging an Individualized Educational Program (IEP) adopted by Respondent School District, alleging Student's proposed placement in level C was an improper change of placement. The law governing these proceedings is the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) §§ 1400-1482 (as re-authorized and amended in

¹ By request of this and a request from Respondent School District for an extension of the timeline, the 45th day, the day by which a decision is due, is August 2, 2017.

² Throughout this Decision, proper names of parents and Student's teachers are not used in order to protect confidentiality of Student and to promote ease of redaction. Pseudonyms (appearing above in bold type) will be used instead. Proper names of administrative personnel, service providers, and expert witnesses are used.

2004),³ and its implementing regulations, 34 Code of Federal Regulations (C.F.R.) Part 300, as well as the Arizona Special Education statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401 through R7-2-406.

Procedural History

At an IEP meeting on January 30, 2017, Respondent School District members of the IEP team proposed that Student move from the level B placement in general education classes with resource classes at L. Thomas Heck Middle School (Heck) to a level C placement in an inclusion program at Western Sky Middle School (Western Sky).⁴ Petitioners filed the Due Process Complaint on February 14, 2017 (Complaint). After a prehearing conference, the two issues raised in the Complaint were restated as follows:

1. Petitioners allege that the proposed change in placement from a level B placement to a level C placement is not appropriate.
2. Petitioners allege that Respondent School District failed to conduct a transition meeting in anticipation of the change in placement.

Petitioners sought an order that Student remain at Heck. Respondent School District denied any violations of the IDEA.

Evidence and Issues at Hearing

The parties presented testimony and exhibits at a formal evidentiary hearing held on March 31, 2017, and on April 5, 2017. The parties presented testimony from the witnesses listed above⁵ and offered into evidence Petitioners' Exhibits 1-12, 15-22, and 24-30 and Respondent School District's Exhibits A-DD.

After the Exhibits and testimony were admitted, the parties submitted written arguments to the tribunal. The Administrative Law Judge has considered the entire record, including the testimony and exhibits,⁶ and now makes the following Findings of Fact, Conclusions of Law, and Order.

³ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004," IDEA 2004 became effective on July 1, 2005.

⁴ Both Heck and Western Sky are schools within Respondent School District.

⁵ Transcripts of the testimony have been added to the record.

⁶ The Administrative Law Judge has read and considered the exhibits referenced during the hearing, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if the witness is not specifically mentioned in this Decision.

FINDINGS OF FACT

1 1. Student, age 12, is a student in the Respondent School District. Student
2 has been enrolled in Respondent School District since kindergarten. Student has been
3 eligible for special education services in the category of Mild Intellectual Disability and
4 has an IEP in place during her attendance at Respondent School District.

5 2. At the end of Student's fifth grade year, Student's IEP Team met to discuss
6 her placement in middle school for the 2016-2017 school year. At that time, two main
7 options were presented and considered: attending general education and resource
8 classes at Heck in a level B placement or attending an inclusion program at Western Sky
9 in a level C placement.

10 3. Parent toured the inclusion program at Western Sky, but did not believe it
11 was appropriate for Student because the students in the classroom had "very severe
12 disabilities" and she believed that Student could get the extra help she needed in the
13 resource room alone.

14 4. The April 18, 2016 IEP Addendum reflected the IEP Team's decision to
15 place Student in the general education and resource classes at Heck in a level B
16 placement, but did not alter the modifications in Student's January 7, 2016 IEP that
17 provided "Alternative assignments will be provided as needed" and "Alternative
18 assessments will be provided as needed."

19 5. On December 12, 2016, the IEP Team met for Student's annual IEP
20 meeting. At that time, the IEP Team members from Respondent School District
21 encouraged Parent to tour the inclusion program at Western Sky again as they believed
22 the inclusion program was best suited to meet Student's needs.

23 6. Parent again refused the inclusion program at Western Sky.

24 7. In an effort to improve Student's performance in the general education
25 classroom, Respondent School District agreed to assign Student a one-on-one
26 paraprofessional on a trial basis for a period of time.

27 8. During the five weeks that Student had a one-on-one paraprofessional, the
28 paraprofessional reported that she had to re-teach Student the lesson almost every class
29 period. The general education teachers also reported during this trial period that Student
30 did not appear to understand what was being taught in the classroom, was unable to

1 answer questions with the class, and could not complete the work independently. The
2 consensus opinion was the Student became more and more reliant on the
3 paraprofessional during the five week trial period.

4 9. The IEP Team met again on January 30, 2017, to review the results of the
5 trial period with the one-on-one paraprofessional. The January 30, 2017 IEP Team
6 meeting was attended by Parent, Ms. McComb, Ms. Lomelino, Ms. Clanin, Mr. Sterr,
7 Special Education Teacher, English Teacher, Math Teacher, and Student's general
8 education science teacher. At that meeting, everyone except Parent agreed that the
9 inclusion program at Western Sky was appropriate for Student.

10 10. A Prior Written Notice (PWN) was issued to Parent indicating that it was the
11 consensus of the IEP team that Student's placement be changed to the inclusion program
12 at Western Sky effective Wednesday, February 8, 2017. Curb to curb transportation was
13 added to the related services page of Student's IEP.

14 11. On February 5, 2017, Parent sent a letter to Ms. McComb that read, in part,
15 as follows:

16 I would like in writing before Wednesday, February 8, 2017, the placement
17 and services that [Student] will be receiving at Western Sky Middle School.
18 I also would like in writing what areas would be different from her current
19 school placement. A private placement may be a better option for my
20 daughter.

21 12. At 2:36 p.m. on February 7, 2017, Parent sent an email to Ms. McComb and
22 Mr. Sterr stating that she had not been provided any information about the school in
23 regards to Western Sky's start time or end time, what Student was supposed to do, or
24 where Student was to report when she got to campus.

25 13. At 2:47 p.m. on February 7, 2017, Ms. McComb replied to Parent's email
26 attaching a copy of Student's December 2016 IEP and the January 2017 Addendum
27 including the details of Student's program that would be implemented at Western Sky.
28 Ms. McComb's email also provided as follows:

29 We are ready for [Student] to start tomorrow and can get transportation in
30 place as soon as needed to provide her access to this placement. We gave
you a transportation form, but I am attaching another here just in case. If
you choose to transport in lieu of the special education bus, we can provide

1 reimbursement to you-we just need a copy of your license and insurance to
2 be able to do this.

3 In response to your mention of a private placement, would you like to
4 reconvene the IEP team to consider outside placement and would you like
5 to invite representatives to the meeting for this placement? If you are
6 planning to privately place without the team, you will need to provide Notice
7 of Parents Intent to Privately Place. I will caution you that one of the biggest
8 concerns with a private placement is that [Student] would not have any
9 access at school to typical peers and this could be detrimental since she
10 does watch and model after peers when she has that exposure.

11 As far as the addendum and placement change completed on 1/30/17, if
12 you remain in disagreement with this placement and wish to contest this
13 decision, you can initiate mediation and the district is willing to participate
14 or you can also initiate due process if you choose.

15 14. At 2:56 p.m. on February 7, 2017, Ms. McComb replied to Parent's email
16 that provided as follows:

17 Western Sky is ready for [Student] tomorrow. We did not receive the
18 transportation form but can have transportation ready if needed but I need
19 to know this as soon as possible. School starts at Western Sky at 8:50 and
20 ends at 3:50. [Western Sky Special Education Teachers] are ready for her
21 and the office also knows she is starting.

22 The placement change is effective tomorrow 2/8/17 unless you have
23 initiated mediation or due process. I have not been notified that this is the
24 case so we will be staying with the current decision at this time. Please see
25 my previous email for information in regards to your other requests. Thank
26 you for your continued communication and please let me know any other
27 questions you may have in regards to the start tomorrow at Western Sky
28 and if you will need transportation for [Student].

29 15. Ms. Clanin, a person familiar to Student, was at Western Sky on February
30 8, 2017, and February 9, 2017, to ease Student's transition to the Western Sky campus.
However, Parent did not sent Student to Western Sky on February 8, 2017, or at any
point thereafter. Parent then filed the Complaint in this matter on February 14, 2017.

16. Pursuant to Parent's request, Respondent School District completed a re-
evaluation of Student in February 2017 and March 2017. On the Woodcock-Johnson IV
Test of Cognitive Abilities, Student's cognitive abilities fell in the "Very Low" range. On
the Kaufman Test of Educational Achievement, Third Edition, Student scored in the "Low"
range in reading and reading fluency and in the "Very Low" range in mathematics and

1 writing. On the Vineland Adaptive Behavior Scales, Third Edition, one of Student's
2 teacher rated Student's adaptive skills in the "Low" range compared to her same age
3 peers, while Parent rated Student's adaptive skills in the "Adequate" range compared to
4 her same age peers. Based on the re-evaluation, Ms. Lomelino concluded that Student's
5 "intellectual disability" and her "well below average performance in reading, writing and
6 math severely compromises her ability to: learn and achieve in the classroom at a rate
7 and a level typical of same-age peers; do seatwork and homework independently; and
8 access the general education curriculum in a manner consistent with typically achieving
9 peers."

10 17. Other evidence presented at the hearing supported Ms. Lomelino's findings.
11 Student did not understand how to properly fill out a multiple choice answer sheet for a
12 quiz. Student needed to be re-taught multiplication after retaining nothing from the first
13 time it was taught and could not answer simple multiplication questions even with a
14 multiplication chart. Student's reading comprehension was at a pre-primer level. Student
15 was writing at a first to third grade level.

16 18. Between December 2016 and March 2017, Student demonstrated no
17 progress on two annual goals, made "somewhat acceptable" progress on one annual
18 goal, made insufficient progress on two annual goals, and regressed on one annual goal.

19 19. Student's grades for the 2016-2017 school year, through the third quarter
20 were as follows:

Subject	1 st Q.	2 nd Q.	3 rd Q.
Advisor/Advisee	P	F	F
Resource Math	B+	B	C-
Reading/LA	B+	B	B-
Math	C-	D+	C-
Science	B	B	A
Resource Reading/LA	C-	D+	C-
Physical Education	A+	A	A+
General Music	A+	B	
Technology			A+

27 20. The testimony provided established that Advisor/Advisee was a pass/fail
28 grade that Student failed in the second and third quarters because certain paperwork was
29 not returned to the homeroom teacher that was to be signed by Parent.
30

1 21. As to reading, Student's January 7, 2016 IEP indicated as follows:

2 [Student] participates in the Read Naturally program which enhances her
3 reading fluency and comprehension skills. At the beginning of the school
4 year, [Student] started reading at 1.3 level. She read on the average 50
5 words per minute with 98% accuracy. [Student's] reading retell was 18
6 words, and her reading comprehension was 75%. [Student] also practiced
7 reading words with long vowel sounds in different combinations.

8 [Student] moved to 1.5 reading level and read on the average 60 words per
9 minute with 99% accuracy. Her retell was 30 words. [Student's] reading
10 comprehension at 1.5 reading level was 99%. [Student] moved to 2.0
11 reading level and now she is able to read on the average 55 words per
12 minute with 95% accuracy. Her retell is 30 words. . . . [Student's] reading
13 comprehension at 2.0 reading level is 50%. [Student] needs guidance and
14 modeling when answering comprehension questions about the main idea
15 and key details.

16 22. Student's December 12, 2016 IEP indicated as follows:

17 [Student] reads approximately 85 words per minute when reading texts
18 leveled at pre-primer to grade 1. Currently, [Student's] independent reading
19 level is late kindergarten. Her instructional reading level is approximately
20 first grade.

21 In the resource room, [Student] participates in the Read180 program. On
22 her initial reading inventory, [Student] scored 0, which is below basic. She
23 made no progress on the second inventory. She chooses books up to a 20
24 Olexile and listens to a recording as well as reading aloud with the teacher.
25 After a few days she is given a quiz on the book and the teacher reads aloud
26 the questions and answers. She averages 78% accuracy on these
27 quizzes. On the software, [Student] is still struggling to pass her first topic.
28 She has scored 20% on comprehension, 60% on vocabulary and 96% on
29 spelling. Her rskills [sic] test score after workshop 1 was 16%. [Student]
30 struggles with identifying the main idea and details, summarizing, making
inferences, identifying cause and effect and understanding vocabulary. On
[Student's] latest fluency assessment she read 4.5 level text at 30 words
per minute and 73% accuracy. [Student] can follow along during whole
group and small group activities and can copy down what the teacher is
modeling with some accuracy.

[Student] struggles with basic reading, fluency, identifying the main idea and
details, summarizing, making inferences, identifying cause and effect and
understanding vocabulary.

Petitioners' Argument

23. Parent's arguments against the change in placement could be summarized
into five main categories: the impact the change in placement would have on Student's

1 ability to take the AzMERIT testing; Student's grades received in the 2016-2017 school
2 year; Respondent School District's failure to implement interventions; the lack of data to
3 support the change in placement; and the population of the inclusion program at Western
4 Sky.

5 24. Parent repeatedly stated that she wanted Student to take the AzMERIT
6 rather than the alternative assessment.⁷ Parent asserted that if Student was not in the
7 general education classes and was not exposed to the general education curriculum,
8 Student would not be equipped to take the AzMERIT. Parent argued that taking the
9 alternative assessment rather than the AzMERIT may affect Student's placement in high
10 school and, ultimately, in college.

11 25. Parent testified that she had no way of knowing Student was struggling
12 during the 2016-2017 school year because her grades were, for the most part As and Bs,
13 and Parent had no way of knowing that Student's grades had been modified. Parent
14 indicated that the only teacher who raised any concerns with her during parent-teacher
15 conferences was Math Teacher. Parent indicated that any parent of a child relies on the
16 grades on a report card to let them know how their child is doing. Parent asserted that if
17 Student was not doing well in class, Parent should have been alerted of such issues via
18 Student's report card. Parent denied receiving any progress reports related to Student's
19 annual IEP goals.

20 26. Parent argued that Respondent School District did not implement
21 appropriate interventions to Student. In her closing argument, Parent asserted that "the
22 only support [Student] receives is from an aide who is not trained in special education nor
23 is required to hold any type of certificate to perform the important job of teaching a special
24 education students strategies to be successful academically."⁸ Further, Parent argued
25 that Respondent School District should have made available to Student other
26 interventions including "before school tutoring, during lunch tutoring, a revised schedule
27 to get extra support, log-in information for all of the supposed research based
28 interventions that the school offers, she could have been pulled into small groups by the

29 ⁷ While Parent stated that Student was not eligible to take the alternative assessment, the evidence
30 established that Respondent School District recommended Student take the alternative assessment, but
Parent has refused.

⁸ All errors in original.

1 teacher in her general education math and reading classes, and the list goes on." Parent
2 testified at the hearing that, "without even being at the school," she could "guarantee that
3 other kids are getting interventions during school, after school, before school, during
4 lunch, a modified schedule to where they can get this extra help."

5 27. Parent asserted that the proposed change in placement was not supported
6 by any data. Parent reiterated her concern regarding Student's grades and progress
7 reports. Parent also asserted that the information provided regarding Student's reading
8 level was inaccurate and inconsistent with prior reading performances.

9 28. Finally, Parent raised concerns as to the other students in the inclusion
10 program at Western Sky. Parent indicated that she did not believe the other students
11 would be appropriate peers for Student as Student was more advanced than the other
12 students.

13 29. As to the lack of a transition meeting, Parent testified that Student cried for
14 two days when she found out that she had to leave her classes at Heck in the middle of
15 the school year. Parent also argued that she had not been provided adequate information
16 regarding the inclusion program at Western Sky to enable her to help Student
17 successfully transition to the new placement.

18 Respondent School District's Position

19 30. Respondent School District asserted that whether Student takes the
20 AzMERIT or the alternative assessment is not relevant to Student's placement. Student
21 is eligible to take the alternative assessment and Respondent School District has
22 recommended that she do so, but Parent has insisted that Student take the AzMERIT.
23 Regardless of which assessment Student takes, she consistently works below grade-
24 level.

25 31. Respondent School District noted that Student's grades ranged from A+ to
26 F during the 2016-2017 school year. The draft versions of the December 2016 IEP, which
27 included a thorough description of Student's present levels, were emailed to Parent on
28 October 12, 2016, and on December 5, 2016. The modification sections of the IEPs
29 provided that alternative assignments and assessments would be provided as necessary.
30 Witnesses testified that Student was graded on what she completed on the modified
assignments and assessments.

1 32. Respondent School District pointed out that the Complaint did not raise as
2 an issue to be determined whether the IEP was inappropriate or had not been
3 implemented. However, to the extent Parent's argument was premised on a belief that
4 Student could be maintained in her current placement at Heck with appropriate
5 accommodations being provided, Respondent School District asserted that Parent failed
6 to introduce any evidence to support that proposition. Parent acknowledged she had not
7 observed Student in her placement at Heck and could not personally testify that any
8 accommodations or modifications were not being implemented. Alternatively,
9 Respondent School District presented witnesses that testified to their observations that
10 even though the appropriate and required accommodations and modifications were
11 implemented at Heck, Student was unable to make meaningful educational progress.

12 33. Respondent School District presented extensive data supporting the
13 proposed change in placement including progress reports, Student's evaluation data,
14 data tracked by the one-on-one paraprofessional, data from reading and math curriculum
15 software, and assignments and assessments in the general education classes.
16 Specifically as to Student's reading level, Respondent School District presented
17 testimony differentiating Student's reading fluency with Student's reading
18 comprehension. Fluency indicates Student's ability to read the words, whereas
19 comprehension indicates Student's ability to understand the meaning of what she reads.
20 Student's pre-primer reading level refers to her reading comprehension and her reading
21 goal referencing fourth grade level text refers to her reading fluency. Respondent School
22 District maintained that the data provided consistently showed that Student's placement
23 at Heck could not provide Student an appropriate education.

24 34. Respondent School District provided the testimony of Ms. Clanin, who
25 asserted that Student would be well-suited for the inclusion program at Western Sky. In
26 reading, Student was described as being "middle of the road" compared to the other
27 students in the class as she was further below grade level than others. In math, Student
28 "was really close, almost the same point" in the curriculum as a group of students in the
29 class. Ms. Clanin testified that the classroom had

30 some students that were a little bit lower functioning than her, a few other
students that had mild intellectual disability, but they might not function as

1 far as the self-help skills by – as high as Student. And then I have – there's
2 some other students in there, one is working at grade level. He has some
3 medical concerns. And a few that have anxiety. So it's – there's a range in
there. I'd say she'd fall right in the middle.

4 35. Respondent School District pointed out that every witness called at the
5 hearing, other than Parent, testified that Student's placement at Heck was not appropriate
6 going forward. The witnesses indicated that Student had shown she could not make
7 progress in the placement at Heck and that they wanted to see Student in a placement
8 where she could be learning and be successful.

9 36. As to the lack of a transition meeting, Respondent School District asserted
10 that a transition meeting is not required by the IDEA when a student moves from one
11 placement to another.

12 37. While not required Respondent School District had provided Parent a 10-
13 day transition period from January 30, 2017, to February 8, 2017, before implementing
14 the change of placement. This was intended to allow Parent time to visit the inclusion
15 program at Western Sky, to set up transportation and to prepare Western Sky staff for
16 Student's arrival. Ms. Clanin was also on the Western Sky campus on February 8, 2017,
17 and February 8, 2017, so Student would have a familiar face meeting her on her first day
18 of school there. Witnesses testified that, because Student would be moving to a more
19 restrictive placement, a transition plan was not necessary because Student would have
20 more supports going into the inclusion program at Western Sky than she had at Heck.⁹

21 **CONCLUSIONS OF LAW**

22 1. A parent who requests a due process hearing alleging non-compliance with
23 the IDEA must bear the burden of proving that claim.¹⁰ The standard of proof is
24 "preponderance of the evidence," meaning evidence showing that a particular fact is "more
25 probable than not."¹¹ Therefore, Petitioners bear the burden of proving their claims and
26 complaints by a preponderance of evidence.

27 ⁹ It was noted that a student moving from a more restrictive placement to a lesser restrictive placement may
28 need more supports in place to ease that transition.

29 ¹⁰ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

30 ¹¹ *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
(1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431,
437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No.*
J-84984, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

2. This tribunal's determination of whether or not Student received a FAPE must be based on substantive grounds.¹² If a procedural violation is alleged and found, it must be determined whether the procedural violation either (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefit.¹³ If one of the three impediments listed has occurred, the child has been denied a FAPE due to the procedural violation.

FAPE

3. Through the IDEA, Congress has sought to ensure that all children with disabilities are offered a FAPE that meets their individual needs.¹⁴ These needs include academic, social, health, emotional, communicative, physical, and vocational needs.¹⁵ To do this, school districts must identify and evaluate all children within their geographical boundaries who may be in need of special education and services. The IDEA sets forth requirements for the identification, assessment and placement of students who need special education, and seeks to ensure that they receive a free appropriate public education. A school offers a FAPE by offering and implementing an IEP "reasonably calculated to enable [a student] to make progress appropriate in light of [the student's] circumstances."¹⁶ FAPE does not require that each child's potential be maximized.¹⁷ A child receives a FAPE if a program of instruction "(1) addresses his unique needs, (2) provides adequate support services so he can take advantage of the educational opportunities and (3) is in accord with an individualized educational program."¹⁸

The IEP

4. Once a child is determined eligible for special education services, a team composed of the child's parents, teachers, and others formulate an IEP that, generally, sets forth the child's current levels of educational performance and sets annual goals that

¹² 20 U.S.C. § 1415(f)(3)(E)(i); 34 C.F.R. § 300.513(a)(1).

¹³ 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. §§ 300.513(a)(2).

¹⁴ 20 U.S.C. § 1400(d); 34 C.F.R. § 300.1.

¹⁵ *Seattle Sch. Dist. No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996) (quoting H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106).

¹⁶ *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. ____ (2017).

¹⁷ *Hendrick Hudson Central Sch. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 198 (1982).

¹⁸ *Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1033 (9th Cir. 2006) (citing *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884, 893 (9th Cir. 1995)).

1 the IEP team believes will enable the child to make progress in the general education
2 curriculum.¹⁹ The IEP tells how the child will be educated, especially with regard to the
3 child's needs that result from the child's disability, and what services will be provided to
4 aid the child. The child's parents have a right to participate in the formulation of an IEP.²⁰
5 The IEP team must consider the strengths of the child, concerns of the parents, evaluation
6 results, and the academic, developmental, and functional needs of the child.²¹ To foster
7 full parent participation, in addition to being a required member of the team making
8 educational decisions about the child, school districts are required to give parents written
9 notice when proposing any changes to the IEP,²² and are required to give parents, at
10 least once a year, a copy of the parents' "procedural safeguards," informing them of their
11 rights as parents of a child with a disability.²³

12 5. The IEP team must consider the concerns of a child's parents when
13 developing an IEP.²⁴ In fact, the IDEA requires that parents be members of any group
14 that makes decisions about the educational placement of a child.²⁵

15 LRE

16 6. The IDEA does not provide an absolute right to a particular placement or
17 location as a child's LRE. Each proposed or alternative placement is simply required to
18 have been "considered" by the IEP Team with regard to potential harmful effect on the
19 student or potential harmful impact on the quality of the services that the child needs.²⁶
20 Therefore, LRE and placement are required to be determined only after analyzing the
21 student's unique needs (and the nature and severity of disabilities) against the federal
22 mandate to educate disabled children "to the maximum extent appropriate" with his or her
23 nondisabled peers. The IDEA preference for mainstreaming is also not an absolute.²⁷

24 ¹⁹ 20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320 to 300.324.

25 ²⁰ 20 U.S.C. § 1414(d)(1)(B); 34 C.F.R. §§ 300.321(a)(1).

26 ²¹ 20 U.S.C. § 1414(d)(3)(A); 34 C.F.R. §§ 300.324(a).

27 ²² 20 U.S.C. § 1415(b)(3); 34 C.F.R. § 300.503.

28 ²³ 20 U.S.C. § 1415(d); 34 C.F.R. § 300.503. Safeguards may also be posted on the Internet.

29 ²⁴ 20 U.S.C. § 1415(d)(B).

30 ²⁵ 20 U.S.C. § 1414(d)(3)(A)(ii); 34 C.F.R. §§ 300.324(a)(1)(ii).

²⁶ 20 U.S.C. § 1414(e); 34 C.F.R. §§ 300.327 and 300.501(c)(1).

²⁷ See 34 C.F.R. § 300.116(d).

²⁸ See 34 C.F.R. §§ 300.114(a)(1) and (2). A school may, and should, remove a child from the regular educational environment if the nature and severity of the child's disability is such that, even with supplemental aids and services, the education of the disabled child cannot be satisfactorily achieved. See 34 C.F.R. §§ 300.114(a)(2)(ii) and 300.116(d).

1 The Administrative Law Judge acknowledges that the IDEA creates tension between
2 provisions that require education to the maximum extent appropriate with nondisabled
3 students and those that require meeting all the student's unique needs.

4 7. The Ninth Circuit established a four-part test regarding consideration of a
5 proposed educational placement in *Sacramento City School District v. Rachel H.*, 14 F.3d
6 1398 (1994). The four factors are: (a) a comparison of the educational benefits available
7 in the regular classroom, supplemented with appropriate aids and services, to the
8 educational benefits of the special education classroom; (b) the nonacademic benefits to
9 the disabled child of interaction with nondisabled children; (c) the effect of the presence
10 of the disabled child on the teacher and other children in the regular classroom; and (d)
11 the costs of supplemental aids and services necessary to mainstream the disabled child
12 in a regular classroom setting.

13 8. An analysis of these factors informs the tribunal as to appropriateness of
14 the proposed change in placement.

15 a. As to the first factor, it cannot be determined with any accuracy what
16 percentage of Student's educational progress during the year is attributable
17 to the general education classroom versus the resource classroom. It was
18 established that Student made very little progress on her annual goals
19 during the 2016-2017 school year and even showed regression on one
20 annual goal. Further, the testimony at hearing demonstrated that Student
21 was not able to meaningfully participate in the general education classroom.

22 b. As to the second factor, Respondent School District presented
23 testimony that Student would sit quietly and watch other students trying to
24 determine appropriate responses based on what other students were doing.
25 English Teacher testified that Student was dependent on her peers during
26 group work. English Teacher also noted that Student was kind to her peers
27 and they are kind to her. English Teacher concluded that the general
28 education students view Student as someone needing help, but not as a
29 peer. Math Teacher stated that Student does not initiate interaction with
30 her peers absent prompting and that she appears to copy from peers
without knowing why.

1 c. As to the third factor, the evidence established that Student was not
2 disruptive in the general education classroom. In fact, Ms. McComb
3 testified that Student was a "sweet girl" who "doesn't cause any problems
4 in the class." Ms. McComb stated that Student could have a one-on-one
5 paraprofessional for the rest of the year and the general education teachers
6 "would have no problem . . . with her."²⁸

7 d. No evidence was submitted related to the fourth factor.

8 9. The Administrative Law Judge concludes that the four factors support the
9 change in placement from the level B placement in general education classes with
10 resource classes at Heck to a level C placement in an inclusion program at Western Sky.

11 10. As to the specific issues raised by Parent, the Administrative Law Judge
12 makes the following findings:

13 a. AzMERIT – Whether Student takes the AzMERIT assessment or the
14 alternative assessment is not a factor under the IDEA as to whether a
15 proposed placement is appropriate for a student.

16 b. Grades – The modification sections in the IEPs provided that Student
17 would be provided modified assignments and assessments as necessary.
18 Even with those modifications, Student received grades as low as D+ in
19 academic subjects. Further, Parent was provided with quarterly progress
20 reports that identified Student's progress on the annual goals, an arguably
21 more pertinent assessment of Student's educational progress during the
22 year than a letter grade.

23 c. Accommodations – No credible evidence was presented to establish
24 that Student was not receiving the accommodations required by the IEPs or
25 that any other accommodations should have been implemented that would
26 enable Student to make appropriate progress in the general education
27 classroom.

28 d. Data – Respondent School District provided extensive data
29 supporting the change in placement including progress reports, Student's

30 ²⁸ Ms. McComb went on to testify that "every single teacher, including the general ed teachers, [was] concerned that that was not the right thing to do, because it would not give her what she deserves."

1 evaluation data, data tracked by the one-on-one paraprofessional, data
2 from reading and math curriculum software, and assignments and
3 assessments in the general education classes. Further, Respondent
4 School District provided testimony establishing that the October 5, 2016
5 progress report was provided to Parent at parent-teacher conferences and
6 the December 5, 2016 progress report was sent home with Student.

7 e. Students in Inclusion Program – Parent’s concern regarding the
8 students in the inclusion program at Western Sky was based on her limited
9 personal observation of the classroom. However, Respondent School
10 District staff who work with the class are familiar with the student’s abilities
11 and needs testified that the students would be appropriate peers for
12 Student.

13 11. While Parent believes that Student can make adequate progress in the
14 general education classroom, the evidence presented established that Student cannot be
15 provided a FAPE in that setting.

16 12. The IDEA does not require the states to provide students with the best
17 education possible. This does not mean, however, that the states do not have the power
18 to provide handicapped children with an education which they consider more appropriate
19 than that proposed by the parents.”²⁹

20 Transition

21 13. The only requirement for “transition services” under the IDEA provides, as
22 follows:

23 (b) *Transition services.* Beginning not later than the first IEP to be in effect
24 when the child turns 16, or younger if determined appropriate by the IEP
25 Team, and updated annually, thereafter, the IEP must include –
26 (1) Appropriate measurable postsecondary goals based upon age
27 appropriate transition assessments related to training, education,
28 employment, and, where appropriate, independent living skills; and
29 (2) The transition services (including courses of study) needed to assist the
30 child in reaching those goals.³⁰

²⁹ *Wilson v. Marana*, 735 F.2d 1178 (9th Cir. 1984).

³⁰ 34 C.F.R. § 300.320

1 14. Nothing in the IDEA requires a transition plan when a student is moving
2 from one grade level to another, from one school to another, or from one placement to
3 another. Thus, in this matter, a transition plan was not required by the IDEA.

4 15. While a transition plan was not required, Respondent School District took
5 measures to ensure that Student's move from Heck to Western Sky was as smooth as
6 possible for her. Parent was given 10 days to visit Western Sky, find out more information
7 about the particulars of the program, arrange for transportation, and prepare Student for
8 the change. Ms. Clanin was also on the Western Sky campus on February 8, 2017, and
9 February 9, 2017, to greet Student so she would see a familiar face on her first day at
10 school.

11 16. Therefore, Petitioners failed to establish Respondent School District
12 violated the IDEA by failing to provide a transition plan prior to initiating the change from
13 the level B placement in general education classes with resource classes at Heck to a
14 level C placement in an inclusion program at Western Sky.

15 Conclusion

16 17. Petitioners failed to establish by a preponderance of the evidence that
17 Respondent School District's proposed change in placement was inappropriate to meet
18 Student's individualized needs.

19 ORDER

20 Based on the findings and conclusions above, IT IS HEREBY ORDERED that
21 that the relief requested in the Complaint is **denied** as set forth above and Petitioners'
22 Complaint is dismissed.

23 Done this day, August 2, 2017.

24
25 /s/ Tammy L. Eigenheer
26 Administrative Law Judge
27

28 RIGHT TO SEEK JUDICIAL REVIEW

29 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3),
30 this Decision and Order is the final decision at the

1 administrative level. Furthermore, any party aggrieved by the
2 findings and decisions made herein has the right to bring a
3 civil action, with respect to the complaint presented, in any
4 State court of competent jurisdiction or in a district court of the
5 United States. Pursuant to Arizona Administrative Code § R7-
6 2-405(H)(8), any party may appeal the decision to a court of
7 competent jurisdiction within thirty-five (35) days of receipt of
8 the decision.

9 Copy mailed/e-mailed/faxed August 2, 2017, to:



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